

# **ATTACHMENT 77**

HIGHLY CONFIDENTIAL

Wilson, James

April 17, 2014

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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IN RE: PROCESSED EGG PRODUCTS | MDL No. 2002  
ANTITRUST LITIGATION | 08-md-02002

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THIS DOCUMENT RELATES TO |  
Publix Super Markets, Inc. v. |  
United Egg Producers, | HIGHLY CONFIDENTIAL  
et al., No. 2:10-cv-06737 GP |

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Thursday, April 17, 2014  
1:00 p.m.

Videotaped deposition of JAMES WILSON, convened  
at Wasilewski Court Reporting, LLC, 1525 South Florida  
Avenue, Suite 4, Lakeland, Florida 33803, pursuant to  
notice, the proceedings being recorded  
stenographically by Susan D. Wasilewski, Registered  
Professional Reporter, Certified Realtime Reporter,  
Certified CART Provider, Certified Manager of  
Reporting Services, and Florida Professional Reporter,  
and transcribed under her direction.

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## HIGHLY CONFIDENTIAL

Wilson, James

April 17, 2014

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<p>1 APPEARANCES OF COUNSEL</p> <p>2</p> <p>3 On behalf of Plaintiff Publix Super Markets,</p> <p>4 Inc., and the witness:</p> <p>5 DAVID P. GERMAINE, ESQUIRE</p> <p>6 JOHN BJORK, ESQUIRE</p> <p>7 Vanek, Vickers &amp; Masini, P.C.</p> <p>8 55 West Monroe Street, Suite 1500</p> <p>9 Chicago, Illinois 60603</p> <p>10 (312) 224-1505</p> <p>11 dgermaine@vaneklaw.com</p> <p>12 jbjork@vaneklaw.com</p> <p>13</p> <p>14 On behalf of Indirect Plaintiffs:</p> <p>15 MERRICK SCOTT RAYLE, ESQUIRE</p> <p>16 Lovell Stewart Halebian Jacobson, LLP</p> <p>17 61 Broadway, Suite 501</p> <p>18 New York, New York 10006</p> <p>19 (415) 533-5316</p> <p>20 msrayle@sbcglobe.net</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 On behalf of Defendant Michael Foods, Inc.:</p> <p>4 PETER SCHWINGLER, ESQUIRE (Via telephone)</p> <p>5 Stinson Leonard Street</p> <p>6 150 South Fifth Street, Suite 2300</p> <p>7 Minneapolis, Minnesota 55402</p> <p>8 (612) 335-7023</p> <p>9 peter.schwingler@stinsonleonard.com</p> <p>10</p> <p>11</p> <p>12 Also Present:</p> <p>13 GARY MARKMAN, Videographer</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
3	5
<p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 On behalf of Defendant/Counterclaim Plaintiff</p> <p>4 Cal-Maine Foods, Inc.:</p> <p>5 OLIVIA A. ADENDORFF, ESQUIRE</p> <p>6 Gibson, Dunn &amp; Crutcher, LLP</p> <p>7 2100 McKinney Avenue</p> <p>8 Dallas, Texas 75201-6912</p> <p>9 (214) 698-3100</p> <p>10 oadendorff@gibsondunn.com</p> <p>11</p> <p>12 On behalf of Defendant Rose Acre Farms, Inc.:</p> <p>13 MOLLY CRABTREE, ESQUIRE (Via telephone)</p> <p>14 Porter, Wright, Morris &amp; Arthur, LLP</p> <p>15 1919 Pennsylvania Northwest, Suite 500</p> <p>16 Washington, DC 20006-3434</p> <p>17 (202) 778-3050</p> <p>18 mcrabtree@porterwright.com</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 CONTENTS</p> <p>2 WITNESS NAME PAGE</p> <p>3 JAMES WILSON</p> <p>4 DIRECT EXAMINATION BY MS. ADENDORFF..... 9</p> <p>5 CROSS-EXAMINATION BY MR. GERMAIN..... 106</p> <p>6 REDIRECT EXAMINATION BY MS. ADENDORFF..... 108</p> <p>7</p> <p>8 EXHIBITS</p> <p>9</p> <p>10 WILSON EXHIBITS PAGE</p> <p>11 Exhibit 1 Acknowledgement and Consent</p> <p>12 Dated 4-17-14 11</p> <p>13</p> <p>14 Exhibit 2 Defendants' Notice of Deposition to</p> <p>15 James Wilson 15</p> <p>16 Exhibit 3 E-mails - Subject: Wilson topics 16</p> <p>17 Exhibit 4 Press Release - FMI: House Bill</p> <p>18 Offers Flexibility for Food Retail</p> <p>19 Industry Health Care Coverage -</p> <p>20 April 3, 2014 21</p> <p>21</p> <p>22 Exhibit 5 January 30, 2002 Memo</p> <p>23 Re: Background for UEP Discussion</p> <p>24 FMI-000805 and 806 27</p> <p>25</p> <p>26 Exhibit 6 FMI Board of Directors 29</p> <p>27</p> <p>28 Exhibit 7 Publix Animal Welfare Statement</p> <p>29 PUB_EGGS_020727 35</p> <p>30 Exhibit 8 For Immediate Release</p> <p>31 FMI Establishes Policy and Program to</p> <p>32 Address Animal Welfare</p> <p>33 MF10274907 and 274908 39</p> <p>34</p> <p>35</p>

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<p style="text-align: right;">10</p> <p>1 Q. So you're familiar with how a deposition works?</p> <p>2</p> <p>3 <b>A. Yes, I am.</b></p> <p>4 Q. But I'd like to go through just a couple of the ground rules again just as a refresher. First of all, because we have a court reporter today, it's important that you give verbal answers to all questions instead of nodding or shaking your head. Does that make sense?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And I will also try to be very careful not to talk over you and I ask you do the same for me so that I would completely finish a question before you give your answer and I wait until you have finished your answer before I ask my next question. Does that make sense?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And during the deposition we can take periodic breaks today, so let me know if you feel like you need a break. All I ask is that you answer any outstanding question before we take a break. Do you understand?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Also, do you understand that whenever we're on the record today, you are testifying under oath?</p> <p>25</p>	<p style="text-align: right;">12</p> <p>1 litigation from a party other than Publix needs to be kept confidential and kept in this deposition so that you don't talk to anyone outside of this deposition about that material?</p> <p>3</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Did you take any steps to prepare for the deposition this afternoon?</p> <p>6 <b>A. I talked to our counsel.</b></p> <p>7 Q. When did you talk to your counsel?</p> <p>8 <b>A. Today and the last deposition.</b></p> <p>9 Q. How long today did you talk to your counsel?</p> <p>10 <b>A. This morning.</b></p> <p>11 Q. For how many hours?</p> <p>12 <b>A. Approximately two.</b></p> <p>13 Q. Did you review any documents during that session with your counsel this morning?</p> <p>14 <b>A. Yes, ma'am.</b></p> <p>15 Q. How many documents?</p> <p>16 <b>A. Five.</b></p> <p>17 Q. Were they documents produced in this litigation?</p> <p>18 <b>A. I -- I don't know.</b></p> <p>19 Q. Do the documents have Bates stamps on the bottom of them?</p> <p>20 <b>A. No, ma'am.</b></p> <p>25</p>
<p style="text-align: right;">11</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. The same as if you were in court before a judge and a jury?</p> <p>3 <b>A. Under oath.</b></p> <p>4 Q. Yes. Are you taking any medication today that may interfere with your ability to testify?</p> <p>5 <b>A. No, ma'am.</b></p> <p>6 Q. Do you know of any other reason that you cannot testify fully or truthfully today?</p> <p>7 <b>A. No, ma'am.</b></p> <p>8 <b>(Wilson Exhibit 1 was marked for identification.)</b></p> <p>9 Q. You have in front of you what's been marked Exhibit 1. Do you recognize this document?</p> <p>10 <b>A. Yes, ma'am.</b></p> <p>11 Q. What is this document?</p> <p>12 <b>A. An acknowledgment of consent.</b></p> <p>13 Q. And did you sign this document today?</p> <p>14 <b>A. Yes, ma'am.</b></p> <p>15 Q. Do you recognize your signature on that document?</p> <p>16 <b>A. Yes, ma'am.</b></p> <p>17 Q. And do you understand that by signing that document, any confidential or highly confidential material you see that has been produced in this</p> <p>25</p>	<p style="text-align: right;">13</p> <p>1 Q. Do you recall what documents you saw this morning?</p> <p>2 <b>A. Yes, ma'am.</b></p> <p>3 Q. What documents were those?</p> <p>4 <b>A. The letter from Mike Bynum to Publix Super Markets, the proclamation or proxy that was presented to Publix by a stockholder. Those are the two main documents.</b></p> <p>5 Q. There were others, though?</p> <p>6 <b>A. I'm sure there were. Those were the two main ones.</b></p> <p>7 Q. You don't recall what the others were?</p> <p>8 <b>A. I can't name them, no, ma'am.</b></p> <p>9 MR. GERMAINE: I can represent for the record, too, that anything Mr. Wilson looked at this morning was produced in the litigation.</p> <p>10 Q. And for your deposition back in August, how did you prepare for that deposition?</p> <p>11 <b>A. I talked to our counsel.</b></p> <p>12 Q. Did you do anything other than talk to counsel?</p> <p>13 <b>A. As far as --</b></p> <p>14 Q. Preparation for the deposition in August.</p> <p>15 <b>A. Do you have an example?</b></p> <p>16 Q. Did you talk to anyone at Publix outside of</p> <p>25</p>

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April 17, 2014

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<p style="text-align: right;">14</p> <p>1 legal counsel?</p> <p>2 <b>A. Yes, ma'am, I talked to other people at</b></p> <p>3 <b>Publix.</b></p> <p>4 Q. Who did you talk to?</p> <p>5 <b>A. Greg Bates, James Lucas, and that was the</b></p> <p>6 <b>main people. I talked to a few other people, Maria,</b></p> <p>7 <b>Michael Roberson.</b></p> <p>8 Q. Maria, what was Maria's last name?</p> <p>9 <b>A. I'm going to mispronounce, Sastre, I think.</b></p> <p>10 Q. Was it Bruce?</p> <p>11 <b>A. Brous.</b></p> <p>12 Q. Brous?</p> <p>13 <b>A. Yes, ma'am.</b></p> <p>14 Q. And what was the last person's name?</p> <p>15 <b>A. Michael Roberson.</b></p> <p>16 Q. And what's Michael's role at Publix?</p> <p>17 <b>A. He's the Director of CQA.</b></p> <p>18 Q. And in talking to those individuals did it</p> <p>19 refresh your recollection about events that occurred</p> <p>20 relevant to this lawsuit?</p> <p>21 <b>A. Yes, ma'am.</b></p> <p>22 Q. How did it refresh your recollection?</p> <p>23 MR. GERMAINE: I'm going to object that this</p> <p>24 -- these line of questions are really outside the</p> <p>25 scope of the notice of this deposition agreed</p>	<p style="text-align: right;">16</p> <p>1 involves?</p> <p>2 <b>A. The egg industry, setting prices on eggs.</b></p> <p>3 Q. Do you know if Publix is involved in that</p> <p>4 suit?</p> <p>5 <b>A. Yes, ma'am.</b></p> <p>6 MR. GERMAINE: Again, Mr. Wilson has answered</p> <p>7 these questions already under oath at a previous</p> <p>8 deposition.</p> <p>9 MS. ADENDORFF: He's testifying in a</p> <p>10 different capacity now, so I'm just confirming.</p> <p>11 MR. GERMAINE: But it's outside the scope of</p> <p>12 the agreed upon notice of deposition.</p> <p>13 Q. You said egg industry setting prices, right?</p> <p>14 <b>A. Yes, ma'am.</b></p> <p>15 Q. Do you understand that Publix is a party to</p> <p>16 this lawsuit?</p> <p>17 <b>A. Yes, ma'am.</b></p> <p>18 Q. And Publix is your employer?</p> <p>19 <b>A. Yes.</b></p> <p>20 <b>(Wilson Exhibit 3 was marked for</b></p> <p>21 <b>identification.)</b></p> <p>22 Q. You have in front of you Exhibit 3. Do you</p> <p>23 recognize this document?</p> <p>24 <b>A. It doesn't look like I'm copied on this</b></p> <p>25 <b>e-mail at all.</b></p>
<p style="text-align: right;">15</p> <p>1 upon, Counsel. You can ask a few more questions</p> <p>2 but let's move on, please.</p> <p>3 <b>A. Will you repeat it?</b></p> <p>4 Q. How did it refresh your recollection?</p> <p>5 <b>A. Just their knowledge.</b></p> <p>6 Q. Their knowledge related to what?</p> <p>7 <b>A. CQA. Maria is in media, so media. James</b></p> <p>8 <b>Lucas was my boss at the time and -- was question --</b></p> <p>9 <b>Greg Bates was category manager of eggs. You already</b></p> <p>10 <b>know that.</b></p> <p>11 THE COURT REPORTER: Keep your voice up.</p> <p>12 Okay?</p> <p>13 THE WITNESS: Yes, ma'am.</p> <p>14 THE COURT REPORTER: Thank you.</p> <p>15 (Wilson Exhibit 2 was marked for</p> <p>16 identification.)</p> <p>17 Q. Have you seen this document before? This is</p> <p>18 Exhibit 2 entitled Defendant's Notice of Deposition</p> <p>19 to James Wilson.</p> <p>20 <b>A. I'm not sure.</b></p> <p>21 Q. Do you understand that you're testifying here</p> <p>22 today in connection with In Re: Processed Egg</p> <p>23 Products Antitrust Litigation?</p> <p>24 <b>A. Yes, ma'am.</b></p> <p>25 Q. And what do you understand that litigation</p>	<p style="text-align: right;">17</p> <p>1 Q. Have you ever seen this e-mail, though?</p> <p>2 <b>A. Not that I'm aware of, no, ma'am.</b></p> <p>3 Q. If you look at the bottom of the page, there</p> <p>4 is a bullet point that says: "Publix's involvement</p> <p>5 with FPM animal welfare efforts during the relevant</p> <p>6 time period."</p> <p>7 Do you know that you're here to testify today</p> <p>8 about certain defined topics?</p> <p>9 <b>A. Yes, ma'am.</b></p> <p>10 Q. And is that one of the topics that you</p> <p>11 understand that you're here to testify about?</p> <p>12 <b>A. Yes, ma'am.</b></p> <p>13 Q. Turning to the second page, at the top do you</p> <p>14 see the bullet point: "Pressure Publix received from</p> <p>15 animal rights group during the relevant time period"?</p> <p>16 <b>A. Yes, ma'am.</b></p> <p>17 Q. Do you understand that you're here to testify</p> <p>18 about that?</p> <p>19 <b>A. Yes, ma'am.</b></p> <p>20 Q. Third bullet point: "The general nature of</p> <p>21 correspondence to and from PETA and any other animal</p> <p>22 rights groups during the relevant time period."</p> <p>23 Do you understand that you're here to testify</p> <p>24 about that topic today?</p> <p>25 <b>A. Yes, ma'am.</b></p>

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<p style="text-align: right;">18</p> <p>1 Q. And the fourth bullet point: "The 2009 2 Publix shareholder proposal on animal welfare and 3 Publix response thereto." 4 Do you understand that you're here to testify 5 about that this morning -- this afternoon? 6 <b>A. Yes.</b> 7 Q. Do you have any knowledge of Publix's 8 involvement with FMI animal welfare efforts during 9 the relevant time period? 10 <b>A. No.</b> 11 Q. Do you have any knowledge about pressure 12 Publix received from animal rights groups between 13 1999 and 2008? 14 <b>A. Yes.</b> 15 Q. What is the basis of that knowledge? 16 <b>A. We received pressure from animal rights 17 groups.</b> 18 Q. What is your grounds for knowing that? 19 <b>A. E-mails.</b> 20 Q. E-mails related to your job function as a 21 buyer for Publix? 22 <b>A. E-mails in relation to Publix selling 23 products.</b> 24 Q. Do you know about the general nature of 25 correspondence to and from PETA and any other animal</p>	<p style="text-align: right;">20</p> <p>1 <b>A. Yes.</b> 2 Q. How do you know about that? 3 <b>A. I looked at the document.</b> 4 Q. But you have no personal knowledge of that 5 proposal or Publix's reaction to that proposal? 6 <b>A. Yes.</b> 7 Q. What personal knowledge? 8 <b>A. I was -- I was at the -- on the desk whenever 9 that proposal came through.</b> 10 Q. Related to the first topic I asked you about, 11 Publix's involvement with FMI animal welfare efforts 12 during the relevant time period, who at Publix would 13 be familiar with that topic other than yourself? 14 Well, you testified that you're not familiar, so who 15 at Publix would be familiar? 16 MR. GERMAINE: Well, I'm sorry, that 17 misstates prior testimony. 18 Q. Did you testify that you're not familiar with 19 Publix's involvement with FMI animal welfare efforts 20 during the relevant time period? 21 MR. GERMAINE: Objection. 22 Q. Are you familiar with Publix's involvement 23 with FMI animal welfare efforts from 1999 to 2008? 24 <b>A. Am I familiar with Publix's involvement with 25 FMI?</b></p>
<p style="text-align: right;">19</p> <p>1 rights groups with Publix between 1999 and 2008? 2 <b>A. Can you repeat that?</b> 3 Q. Do you know about the general nature of 4 correspondence between Publix and PETA or any other 5 animal rights groups between 1999 and 2008? 6 <b>A. Yes.</b> 7 Q. And how do you know about that? 8 <b>A. The correspondence, e-mails.</b> 9 Q. Yes. Were you involved directly in that 10 correspondence? 11 <b>A. No.</b> 12 Q. Were the e-mails you're referring to e-mails 13 you received in your job function as a buyer for 14 Publix? 15 <b>A. No.</b> 16 Q. How did you see these e-mails? 17 <b>A. They would go to our department that answers 18 the e-mails. We would get asked -- we would get 19 questions -- I mean, we have standardized answers for 20 those, those questions in those e-mails.</b> 21 Q. But you were made aware of those e-mails in 22 your job function? 23 <b>A. Yes.</b> 24 Q. Do you know about any shareholder proposal 25 Publix received related to animal welfare in 2009?</p>	<p style="text-align: right;">21</p> <p>1 Q. Animal welfare efforts from 1999 to 2008. 2 <b>A. Yes.</b> 3 Q. Who else at Publix would be familiar with 4 that topic? 5 <b>A. I don't know.</b> 6 Q. You're familiar with the Food Marketing 7 Institute, correct? 8 <b>A. Yes.</b> 9 Q. What do you understand the Food Marketing 10 Institute to be? 11 <b>A. It's an organization for Food Marketing 12 Institute.</b> 13 <b>(Wilson Exhibit 4 was marked for 14 identification.)</b> 15 MS. ADENDORFF: I may only have three copies. 16 Sorry about that. I don't know why. Did I give 17 someone two? 18 MR. GERMAINE: No. 19 MS. ADENDORFF: Oh, no, I do. Sorry. 20 BY MS. ADENDORFF: 21 Q. This is a press release from FMI in April 22 2014 that I printed off the web today and this has 23 been marked as Exhibit 3 -- 4. If you flip to the 24 second page, can you take a look at the paragraph 25 under the three hash tags and just read that</p>



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<p style="text-align: right;">22</p> <p>1 paragraph?</p> <p>2 <b>A. Yes, ma'am.</b></p> <p>3 Q. And are you -- this -- the first sentence of</p> <p>4 this paragraph states that: "The Food Marketing</p> <p>5 Institute proudly advocates on behalf of the food</p> <p>6 retail industry."</p> <p>7 Publix is a member of the food retail</p> <p>8 industry, correct?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Do you understand that Food Marketing</p> <p>11 Institute advocates on Publix's behalf?</p> <p>12 <b>A. In some things.</b></p> <p>13 Q. With respect to what things?</p> <p>14 <b>A. Any number of different issues.</b></p> <p>15 Q. With respect to animal welfare?</p> <p>16 <b>A. I -- I don't know.</b></p> <p>17 Q. You don't know if FMI deals with animal</p> <p>18 welfare or advocates --</p> <p>19 <b>A. I don't -- I don't know if it -- it would</b></p> <p>20 <b>advocate on our behalf on all issues with animal</b></p> <p>21 <b>welfare.</b></p> <p>22 Q. You testified in your previous deposition,</p> <p>23 though, that Publix adopted FMI's animal welfare</p> <p>24 guidelines, correct?</p> <p>25 <b>A. Yes.</b></p>	<p style="text-align: right;">24</p> <p>1 <b>standard.</b></p> <p>2 Q. And by industry standard, you mean others in</p> <p>3 the industry adopted the same standard, correct?</p> <p>4 <b>A. According to the document, 1225.</b></p> <p>5 Q. Were you aware that the Food Marketing</p> <p>6 Institute is that large?</p> <p>7 <b>A. I knew it had a lot of members.</b></p> <p>8 Q. Do you know who -- do you know if Publix is a</p> <p>9 member of FMI?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Do you know who at Publix is involved in FMI</p> <p>12 efforts?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Do you know any individuals that participate</p> <p>15 in FMI in any way that work for Publix?</p> <p>16 <b>A. Currently?</b></p> <p>17 Q. Yes.</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Who?</p> <p>20 <b>A. Mike Roberson, Maria Brous.</b></p> <p>21 Q. And you testified that Mike Roberson is</p> <p>22 Director of CQA, correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Do you know what his involvement with FMI</p> <p>25 relates to?</p>
<p style="text-align: right;">23</p> <p>1 Q. So if it adopted the animal welfare</p> <p>2 guidelines, were FMI guidelines drafted in part on</p> <p>3 Publix's behalf?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 MR. RAYLE: Join.</p> <p>6 <b>A. No.</b></p> <p>7 Q. If -- Publix endorsed those guidelines,</p> <p>8 though, correct?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So it viewed those guidelines as beneficial</p> <p>11 for Publix, right?</p> <p>12 MR. GERMAINE: Objection to form.</p> <p>13 <b>A. Viewed them as the industry standard.</b></p> <p>14 Q. And it endorsed them?</p> <p>15 <b>A. As the industry standard.</b></p> <p>16 Q. And it saw that industry standard as</p> <p>17 beneficial for Publix?</p> <p>18 <b>A. We saw it as the industry standard.</b></p> <p>19 Q. Why would Publix endorse an industry</p> <p>20 standard?</p> <p>21 <b>A. The rest of the industry is endorsing it.</b></p> <p>22 Q. So Publix did it because it observed other</p> <p>23 members of the retail grocery industry also endorsing</p> <p>24 the standard?</p> <p>25 <b>A. Publix did it because it was the industry</b></p>	<p style="text-align: right;">25</p> <p>1 <b>A. CQA issues, I would --</b></p> <p>2 Q. And what are CQA issues?</p> <p>3 <b>A. Corporate quality assurance.</b></p> <p>4 Q. What types of issues are those?</p> <p>5 <b>A. Quality assurance issues.</b></p> <p>6 Q. Is that related to food safety?</p> <p>7 <b>A. It could be.</b></p> <p>8 Q. Could it be related to animal welfare?</p> <p>9 <b>A. It could be.</b></p> <p>10 Q. And you understand that he is involved with</p> <p>11 FMI on CQA issues?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you know if he serves on any committees of</p> <p>14 FMI?</p> <p>15 <b>A. No.</b></p> <p>16 Q. Maria Brous or Brous, what do you understand</p> <p>17 her involvement to be with FMI?</p> <p>18 <b>A. The media side of FMI.</b></p> <p>19 Q. What is the media side of FMI?</p> <p>20 <b>A. Deals with media.</b></p> <p>21 Q. Does she draft press releases for FMI?</p> <p>22 <b>A. No.</b></p> <p>23 Q. What do you mean by media? Do you mean press</p> <p>24 relations?</p> <p>25 <b>A. I mean anything that has to do with outside</b></p>



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<p style="text-align: right;">26</p> <p>1 <b>press.</b></p> <p>2 Q. Outside Publix?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Does she handle inquiries from outside of</p> <p>5 Publix to Publix asking questions regarding Publix?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And how does that overlap with FMI at all?</p> <p>8 <b>A. How does --</b></p> <p>9 Q. You said that she has some relationship to</p> <p>10 FMI. What is her relationship to FMI?</p> <p>11 <b>A. I'm sure she deals with other people that</b></p> <p>12 <b>deal with their companies on media aspects.</b></p> <p>13 Q. And she coordinates with those people or</p> <p>14 meets with those people through FMI?</p> <p>15 <b>A. I don't know if she meets with them or not.</b></p> <p>16 Q. Do you know if she participates in FMI</p> <p>17 meetings?</p> <p>18 <b>A. I don't know that, no, ma'am.</b></p> <p>19 Q. So on what basis did you say that she has</p> <p>20 some relationship with FMI?</p> <p>21 <b>A. She corresponds with other media relations,</b></p> <p>22 <b>leaders in other companies, through FMI.</b></p> <p>23 Q. Do you know of any other Publix employees who</p> <p>24 are involved with FMI?</p> <p>25 <b>A. No, ma'am.</b></p>	<p style="text-align: right;">28</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Who is Howard Jenkins?</p> <p>3 <b>A. He's Howard Jenkins, one of our founders --</b></p> <p>4 <b>not one of the founders. He's one of the -- one of</b></p> <p>5 <b>the siblings of one of the founders.</b></p> <p>6 Q. So he's in the founding family of Publix?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Did he ever serve as the CEO or president of</p> <p>9 Publix?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Do you know if he was CEO in 2002?</p> <p>12 <b>A. I'm not sure.</b></p> <p>13 Q. Did you know that Howard Jenkins was involved</p> <p>14 with FMI?</p> <p>15 <b>A. Now I do.</b></p> <p>16 Q. But you don't independently recall that?</p> <p>17 <b>A. No, ma'am.</b></p> <p>18 Q. And do you know when FMI adopted its animal</p> <p>19 welfare guidelines?</p> <p>20 <b>A. Wasn't it 2002?</b></p> <p>21 Q. I ask questions, not answer them. Do you</p> <p>22 know if it was 2002?</p> <p>23 <b>A. No, ma'am.</b></p> <p>24 Q. Do you know if it was in or around 2002?</p> <p>25 <b>A. Yes.</b></p>
<p style="text-align: right;">27</p> <p>1 Q. Do you know when Mike Roberson became</p> <p>2 involved with FMI?</p> <p>3 <b>A. No, ma'am.</b></p> <p>4 Q. Do you know when Maria Brous became involved</p> <p>5 with FMI?</p> <p>6 <b>A. No, ma'am.</b></p> <p>7 <b>(Wilson Exhibit 5 was marked for</b></p> <p>8 <b>identification.)</b></p> <p>9 Q. You have in front of you what's been marked</p> <p>10 Exhibit 5. This is a confidential document produced</p> <p>11 by FMI Bates stamped FMI 000805. Do you recognize</p> <p>12 this document?</p> <p>13 <b>A. No, ma'am.</b></p> <p>14 Q. This appears to be an FMI memo or letter</p> <p>15 dated January 2002, and if you flip to the second</p> <p>16 page, do you see that there is a list of the Food</p> <p>17 Marketing Institute officers and directors?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. If you go to the second column and go to the</p> <p>20 bottom, do you see the name Howard M. Jenkins?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And underneath that name it says Publix Super</p> <p>23 Markets, correct?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Do you know who Howard M. Jenkins is?</p>	<p style="text-align: right;">29</p> <p>1 Q. So Howard Jenkins was on the board of FMI at</p> <p>2 the time that FMI adopted its animal welfare</p> <p>3 guidelines?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 <b>A. This was in January? I think they adopted</b></p> <p>6 <b>them late 2002.</b></p> <p>7 Q. Correct. So this e-mail -- during this memo</p> <p>8 on the front page, he was on the board of directors</p> <p>9 we've just seen, right?</p> <p>10 <b>A. In January.</b></p> <p>11 MR. GERMAINE: Objection.</p> <p>12 <b>(Wilson Exhibit 6 was marked for</b></p> <p>13 <b>identification.)</b></p> <p>14 Q. You have in front of you Exhibit 6, and I</p> <p>15 represent that this is a printout from the current</p> <p>16 FMI website. I printed this myself last week. Do</p> <p>17 you recognize the logo at the top of the page?</p> <p>18 <b>A. Yes, ma'am.</b></p> <p>19 Q. You recognize that as the FMI logo, right?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And this says Board of Directors, correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. There's no page numbers on this but there is</p> <p>24 a page that starts with Ms. Carla Cooper. Do you see</p> <p>25 that?</p>

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<p style="text-align: right;">30</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Do you see the second name there is</p> <p>3 Mr. William E. Crenshaw, Publix Super Markets, Inc.?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Who is William Crenshaw?</p> <p>6 <b>A. He's our CEO.</b></p> <p>7 Q. He's your current CEO?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Did you know that William Crenshaw was on the</p> <p>10 2014 board of directors for FMI?</p> <p>11 <b>A. I do now.</b></p> <p>12 Q. Do you know if the CEOs of Publix from 2002</p> <p>13 to 2014 have continually served on the board of</p> <p>14 directors of FMI?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. Do you have any reason to doubt they were on</p> <p>17 the board of directors in that time frame?</p> <p>18 <b>A. I wouldn't speculate.</b></p> <p>19 Q. Is FMI considered a reliable source of</p> <p>20 information in the industry?</p> <p>21 <b>A. FMI?</b></p> <p>22 Q. Uh-huh.</p> <p>23 <b>A. That's speculation. I mean, I wouldn't</b></p> <p>24 <b>speculate.</b></p> <p>25 Q. Have you ever relied on information from FMI?</p>	<p style="text-align: right;">32</p> <p>1 <b>A. No.</b></p> <p>2 Q. Did it consult any experts in the field of</p> <p>3 animal welfare?</p> <p>4 <b>A. Just our suppliers.</b></p> <p>5 Q. You consulted your suppliers and then you</p> <p>6 reviewed FMI's guidelines. Is that all?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. FMI intended its guidelines to be relied on,</p> <p>9 right?</p> <p>10 MR. GERMAINE: Objection to form.</p> <p>11 MR. RAYLE: Join.</p> <p>12 <b>A. Will you repeat that question again?</b></p> <p>13 Q. FMI issued animal welfare guidelines so that</p> <p>14 the industry could rely on those guidelines, correct?</p> <p>15 MR. GERMAINE: Objection to form.</p> <p>16 <b>A. I'm sure that was their intent.</b></p> <p>17 Q. And FMI works on behalf of the retail food</p> <p>18 industry, correct?</p> <p>19 <b>A. According to their documents.</b></p> <p>20 Q. For what purpose do you understand Publix</p> <p>21 participates in FMI, generally?</p> <p>22 <b>A. For what purpose?</b></p> <p>23 Q. Uh-huh. Yes.</p> <p>24 <b>A. I guess for industry news, industry</b></p> <p>25 <b>information.</b></p>
<p style="text-align: right;">31</p> <p>1 <b>A. Me personally?</b></p> <p>2 Q. Yes.</p> <p>3 <b>A. No, ma'am.</b></p> <p>4 Q. Do you know if Publix has?</p> <p>5 <b>A. No, ma'am, not that I know of.</b></p> <p>6 Q. Publix endorsed the FMI 2002 animal welfare</p> <p>7 guidelines, correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And in doing so, were they relying on FMI's</p> <p>10 judgment regarding the animal welfare benefits in</p> <p>11 those guidelines?</p> <p>12 <b>A. We were relying on the industry standard.</b></p> <p>13 Q. And the FMI -- FMI drafted that industry</p> <p>14 standard, correct?</p> <p>15 MR. GERMAINE: Objection to form.</p> <p>16 <b>A. Not to my knowledge. UEP drafted those</b></p> <p>17 <b>guidelines.</b></p> <p>18 Q. With respect to egg-laying hens, correct?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. But FMI drafted guidelines explicitly</p> <p>21 adopting the UEP guidelines, correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And did Publix do any independent</p> <p>24 investigation as to whether or not it should adopt</p> <p>25 the FMI guidelines or the UEP Certified Program?</p>	<p style="text-align: right;">33</p> <p>1 Q. So FMI sends Publix or Publix receives from</p> <p>2 FMI in some way industry news and information,</p> <p>3 correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. And is FMI a trustworthy source of such</p> <p>6 information?</p> <p>7 <b>A. You're asking for assumption again.</b></p> <p>8 Q. Does Publix trust the information that it</p> <p>9 gets from FMI?</p> <p>10 <b>A. Generally speaking?</b></p> <p>11 Q. Yes.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you know if any Publix employees were</p> <p>14 involved with FMI's consideration of animal welfare</p> <p>15 guidelines?</p> <p>16 <b>A. No.</b></p> <p>17 Q. At any point in time?</p> <p>18 <b>A. No.</b></p> <p>19 Q. Do you know who are FM -- who are Publix's</p> <p>20 competitors?</p> <p>21 <b>A. Other retailers.</b></p> <p>22 Q. Can you name a couple of your large</p> <p>23 competitors?</p> <p>24 <b>A. Kroger, Wal-Mart, Winn Dixie, CVS, Walgreens,</b></p> <p>25 <b>Trader Joe's, Whole Foods. Do you want me to</b></p>

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<p style="text-align: right;">34</p> <p>1 <b>continue?</b></p> <p>2 Q. That's good, a good list. Do you know if any</p> <p>3 of those competitors are also members of FMI?</p> <p>4 <b>A. You're asking for assumption.</b></p> <p>5 Q. Do you personally know that any of them are</p> <p>6 members of FMI?</p> <p>7 <b>A. No.</b></p> <p>8 Q. What do you understand the term animal</p> <p>9 welfare to mean?</p> <p>10 <b>A. The welfare of animals.</b></p> <p>11 Q. What do you understand welfare to mean in</p> <p>12 that context?</p> <p>13 <b>A. Taking care of.</b></p> <p>14 Q. When I use the term today, I mean the</p> <p>15 accepted notion that something increases the</p> <p>16 productivity, health, or happiness of an animal,</p> <p>17 particularly an animal used in the food industry.</p> <p>18 Does that make sense?</p> <p>19 <b>A. Repeat that.</b></p> <p>20 Q. I will use the term to mean something that</p> <p>21 increases the productivity, health, or happiness of</p> <p>22 an animal, particularly an animal used in the food</p> <p>23 industry.</p> <p>24 <b>A. So you mean animal welfare --</b></p> <p>25 Q. Yes.</p>	<p style="text-align: right;">36</p> <p>1 Q. You have in front of you what's been marked</p> <p>2 as Exhibit 7, a highly confidential document Bates</p> <p>3 stamped PUB_EGGS_020727. Do you recognize this</p> <p>4 document?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. How do you recognize it?</p> <p>7 <b>A. It's on our website.</b></p> <p>8 Q. And this document is entitled "Publix Animal</p> <p>9 Welfare Statement," correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And do you understand this to be a statement</p> <p>12 of Publix's values with respect to animal welfare?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Is this Publix's animal welfare policy?</p> <p>15 <b>A. It's a statement.</b></p> <p>16 Q. And does the statement reflect Publix's</p> <p>17 policy or approach towards animal welfare?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Looking at the last sentence of the first</p> <p>20 paragraph, it says: "We endorse the Animal Welfare</p> <p>21 Guidelines developed by the Food Marketing Institute,</p> <p>22 FMI, and the National Council of Chain Restaurants,</p> <p>23 NCCR, and we have adopted these guidelines as a</p> <p>24 standard requirement for our suppliers."</p> <p>25 Does that reflect your understanding that</p>
<p style="text-align: right;">35</p> <p>1 <b>A. -- you're saying is all of those things that</b></p> <p>2 <b>you just --</b></p> <p>3 Q. Yes. Does that make sense?</p> <p>4 <b>A. In certain regards.</b></p> <p>5 Q. Is there any regards to which you object to</p> <p>6 that definition?</p> <p>7 <b>A. I don't know that it produces or it increases</b></p> <p>8 <b>production.</b></p> <p>9 Q. You don't know if part of an animal being</p> <p>10 healthy is it being productive, for example, in the</p> <p>11 case of hens?</p> <p>12 MR. GERMAINE: Objection to form.</p> <p>13 <b>A. Yeah, that --</b></p> <p>14 Q. Do you know if a hen is healthy, if it's more</p> <p>15 productive than it is when it is unhealthy?</p> <p>16 MR. GERMAINE: Objection to form.</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Does Publix have established animal welfare</p> <p>19 guidelines?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Publix does not have an animal welfare</p> <p>22 policy?</p> <p>23 <b>A. No, ma'am.</b></p> <p>24 <b>(Wilson Exhibit 7 was marked for</b></p> <p>25 <b>identification.)</b></p>	<p style="text-align: right;">37</p> <p>1 Publix has adopted the FMI-NCRR Animal Welfare</p> <p>2 Guidelines?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And in the next paragraph it says: "To</p> <p>5 strengthen food quality and safety and ensure animal</p> <p>6 well-being at every step of the production process,</p> <p>7 we support the cooperative work of FMI and its</p> <p>8 counterparts in the food industry to promote</p> <p>9 production best practices for each species."</p> <p>10 Does that accurately reflect Publix's</p> <p>11 position towards animal welfare?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Notice the part of the sentence that says,</p> <p>14 "We support the cooperative work of FMI." What is</p> <p>15 the cooperative work of FMI?</p> <p>16 <b>A. I don't know.</b></p> <p>17 Q. Is that the work of people in the retail</p> <p>18 grocery industry working together through FMI?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Is that also FMI's work with counterparts in</p> <p>21 the food industry?</p> <p>22 <b>A. The food industry?</b></p> <p>23 Q. I'm just asking what you understand that to</p> <p>24 mean.</p> <p>25 <b>A. What do you mean by the food industry? Are</b></p>

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<p style="text-align: right;">38</p> <p>1 <b>you talking about retailers?</b></p> <p>2 Q. I'm asking what you understand food industry</p> <p>3 to mean in that sentence?</p> <p>4 <b>A. Oh, I don't know.</b></p> <p>5 Q. Could it be the producers, the animal</p> <p>6 products producers?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. In the next paragraph it says: "We also</p> <p>9 support FMI's efforts to consult regularly with</p> <p>10 experts in animal husbandry, veterinary medicine and</p> <p>11 agricultural production in order to obtain measurable</p> <p>12 indices of desirable practices in the growth,</p> <p>13 handling and processing of animals for food</p> <p>14 production."</p> <p>15 Does this reflect that Publix was aware that</p> <p>16 FMI was consulting with experts in these areas?</p> <p>17 <b>A. Was Publix aware? Yes.</b></p> <p>18 Q. And did Publix rely on FMI's animal welfare</p> <p>19 guidelines in part because of FMI's reliance on these</p> <p>20 experts?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Do you know who at Publix adopted or drafted</p> <p>23 this statement?</p> <p>24 <b>A. No.</b></p> <p>25 Q. Do you have any idea what group at Publix</p>	<p style="text-align: right;">40</p> <p>1 Do you see that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Do you recognize this document?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Let's take a look at the end of the first</p> <p>6 sentence -- the first paragraph: "This policy was</p> <p>7 established to support industry programs that</p> <p>8 strengthen animal welfare, food quality and food</p> <p>9 safety."</p> <p>10 Is that what Publix understood FMI's animal</p> <p>11 welfare policy to do?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Is that what Publix intended to do when it</p> <p>14 adopted the FMI guidelines?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Is animal welfare important to Publix?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Why?</p> <p>19 <b>A. It's important to our customers.</b></p> <p>20 Q. Is Publix aware of what its industry</p> <p>21 competitors' positions are with respect to the FMI</p> <p>22 guidelines?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Does Publix monitor in any way its</p> <p>25 competition's animal welfare policy -- policies?</p>
<p style="text-align: right;">39</p> <p>1 would be involved in formulating its animal welfare</p> <p>2 policy?</p> <p>3 <b>A. Any idea what group at Publix would be</b></p> <p>4 <b>involved -- be involved? There's only a certain</b></p> <p>5 <b>amount of people that work at Publix, so I would be</b></p> <p>6 <b>speculating as to who it would be.</b></p> <p>7 Q. Do you know who at Publix reviewed the FMI</p> <p>8 guidelines in order to decide to endorse them?</p> <p>9 MR. GERMAINE: Objection; it lacks</p> <p>10 foundation.</p> <p>11 <b>A. No.</b></p> <p>12 Q. One more question about this document: Do</p> <p>13 you see at the bottom it says July 2002?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Does this reflect your understanding that</p> <p>16 this was Publix's policy as of July 2002?</p> <p>17 <b>A. Yes.</b></p> <p>18 <b>(Wilson Exhibit 8 was marked for</b></p> <p>19 <b>identification.)</b></p> <p>20 Q. You have in front of you what's been marked</p> <p>21 as Exhibit 8. It's Bates stamped MFI0274907, and</p> <p>22 it's a confidential document. At the top it says:</p> <p>23 "For Immediate release. FMI establishes policy and</p> <p>24 program to address animal welfare." And then it</p> <p>25 appears this press release is dated April 18th, 2001.</p>	<p style="text-align: right;">41</p> <p>1 <b>A. No.</b></p> <p>2 Q. Sorry. Going back to this document, under</p> <p>3 "Program Components," if you flip to the next page,</p> <p>4 bullet point 4 says: "Distribute the set of</p> <p>5 expectations as voluntary recommendations for retail</p> <p>6 companies to adopt and use in their discussions with</p> <p>7 current and future suppliers."</p> <p>8 And in fact, Publix, a retail company, did</p> <p>9 adopt these recommendations, correct?</p> <p>10 MR. GERMAINE: Objection to form.</p> <p>11 <b>A. I haven't read all the --</b></p> <p>12 Q. Go ahead. You can read it.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Did Publix, in fact, use those guidelines in</p> <p>15 their discussions with suppliers?</p> <p>16 MR. BJORK: Objection to form.</p> <p>17 <b>A. I don't know.</b></p> <p>18 Q. You worked as an egg buyer for Publix,</p> <p>19 correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. In the retail grocery department?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And in the retail grocery department when you</p> <p>24 were an egg buyer, did you ever discuss FMI's</p> <p>25 guidelines with suppliers?</p>

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<p style="text-align: right;">42</p> <p>1 <b>A. No.</b></p> <p>2 Q. Do you know if any of your predecessors</p> <p>3 discussed animal welfare guidelines with suppliers?</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. Do you know if Publix in any way communicated</p> <p>6 to its egg suppliers at any point in time that it had</p> <p>7 adopted the FMI Animal Welfare Guidelines?</p> <p>8 <b>A. There's an e-mail -- or it's on our website</b></p> <p>9 <b>right here.</b></p> <p>10 Q. When Publix --</p> <p>11 MR. GERMAINE: Can we take a break? I'm</p> <p>12 sorry, Olivia. Can we take a break for a minute?</p> <p>13 MS. ADENDORFF: Sure.</p> <p>14 THE VIDEOGRAPHER: We're now off the record.</p> <p>15 The time is 1:42 p.m.</p> <p>16 (Recess from 1:42 p.m. until 1:51 p.m.)</p> <p>17 THE VIDEOGRAPHER: We're now on the record.</p> <p>18 The time is 1:51 p.m.</p> <p>19 BY MS. ADENDORFF:</p> <p>20 Q. You referred earlier to FMI's guidelines as</p> <p>21 industry standard animal welfare guidelines, correct?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. So when Publix adopted FMI's guidelines, it</p> <p>24 knew that others in the industry would also be</p> <p>25 adopting those guidelines, right?</p>	<p style="text-align: right;">44</p> <p>1 <b>(Wilson Exhibit 9 was marked for</b></p> <p>2 <b>identification.)</b></p> <p>3 Q. You have in front of you what's been marked</p> <p>4 as Exhibit 9. It's Bates stamped FMI000015, and this</p> <p>5 is a copy of the FMI June 2002 Animal Welfare Program</p> <p>6 Report, correct?</p> <p>7 <b>A. FMI-NCCR Animal Welfare Program.</b></p> <p>8 Q. And are you familiar with this document?</p> <p>9 <b>A. No.</b></p> <p>10 Q. You've never seen it before?</p> <p>11 <b>A. No.</b></p> <p>12 Q. This is a copy of the guidelines that you've</p> <p>13 testified that Publix adopted. In turning to the</p> <p>14 third page of the document you will see at the bottom</p> <p>15 where it says "Laying Hens." You understand that the</p> <p>16 guidelines related to egg-laying hens, correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And you also testified you understand that</p> <p>19 the FMI guidelines adopted UEP's certified program,</p> <p>20 correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And you see in the first sentence there under</p> <p>23 Laying Hens: "FMI and NCCR recommend to their</p> <p>24 members the 2002 guidelines of the United Egg</p> <p>25 Producers for use with their suppliers of eggs and</p>
<p style="text-align: right;">43</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. In fact, that was the goal of Publix using</p> <p>3 FMI's guidelines instead of developing its own,</p> <p>4 right?</p> <p>5 <b>A. Goal? We were told that those were the</b></p> <p>6 <b>guidelines.</b></p> <p>7 Q. Who told Publix that those were the</p> <p>8 guidelines?</p> <p>9 <b>A. FMI and our suppliers.</b></p> <p>10 Q. And Publix sought to adopt industry standard</p> <p>11 guidelines because it wanted to adopt standards that</p> <p>12 others in the industry were adopting, correct?</p> <p>13 MR. GERMAINE: Objection to form.</p> <p>14 <b>A. We wanted to do what was right.</b></p> <p>15 Q. And how did Publix assess that the</p> <p>16 industrywide guidelines were what was right?</p> <p>17 <b>A. Because we were told they were by the FMI and</b></p> <p>18 <b>by our suppliers.</b></p> <p>19 Q. And FMI represented the retail industry,</p> <p>20 correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And did Publix take any efforts to develop</p> <p>23 its own animal welfare guidelines outside of the FMI</p> <p>24 guidelines?</p> <p>25 <b>A. No.</b></p>	<p style="text-align: right;">45</p> <p>1 egg products."</p> <p>2 Did you use the UEP guidelines with your</p> <p>3 suppliers of eggs and egg products?</p> <p>4 <b>A. Did we use the UEP guidelines?</b></p> <p>5 Q. Yes.</p> <p>6 <b>A. What do you mean in that respect?</b></p> <p>7 Q. Did you use in any way the UEP guidelines</p> <p>8 with your suppliers of eggs and egg products?</p> <p>9 <b>A. Did we use the UEP -- they were already</b></p> <p>10 <b>members of the UEP.</b></p> <p>11 Q. Did you in any way use those guidelines or</p> <p>12 rely on those guidelines in your relationship with</p> <p>13 your egg suppliers?</p> <p>14 <b>A. It was a nonissue.</b></p> <p>15 Q. But did you ever communicate to your</p> <p>16 suppliers that you required compliance with the UEP</p> <p>17 guidelines?</p> <p>18 <b>A. Publix?</b></p> <p>19 Q. Correct.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. In the next sentence it says: "UEP developed</p> <p>22 a process specifically to address animal welfare</p> <p>23 concerns in 1999 and formulated their guidelines with</p> <p>24 the input of a Scientific Advisory Committee."</p> <p>25 Was Publix aware that the UEP Certified</p>

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<p style="text-align: right;">46</p> <p>1 Guidelines had been drafted with the input of a</p> <p>2 Scientific Advisory Committee?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And did Publix rely on these guidelines</p> <p>5 because of the input of a Scientific Advisory</p> <p>6 Committee?</p> <p>7 <b>A. We relied on the guidelines because FMI and</b></p> <p>8 <b>our suppliers told us that these were the guidelines.</b></p> <p>9 Q. And we've already established that FMI also</p> <p>10 relied on outside scientific experts, correct?</p> <p>11 <b>A. It says so right here.</b></p> <p>12 Q. In the next sentence it lists several of the,</p> <p>13 quote, "most challenging issues affecting laying</p> <p>14 hens," and it lists: "Beak trimming, induced</p> <p>15 molting, space allocation, handling transportation,</p> <p>16 handling and processing of spent hens, and</p> <p>17 euthanasia." Are you familiar with any of those</p> <p>18 issues?</p> <p>19 <b>A. Do you mean do I have knowledge of the</b></p> <p>20 <b>issues --</b></p> <p>21 Q. Yes.</p> <p>22 <b>A. -- as it pertains to our suppliers?</b></p> <p>23 Q. Egg-laying hens, yes.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Which issues?</p>	<p style="text-align: right;">48</p> <p>1 Q. And you understood that it did?</p> <p>2 <b>A. We were told it did.</b></p> <p>3 Q. Sorry. Grabbing this document again,</p> <p>4 Exhibit 9, looking at the second paragraph, it says:</p> <p>5 "The issues covered in this report are important and</p> <p>6 complicated. Some recommendations contained within</p> <p>7 this report have economic implications."</p> <p>8 When Publix adopted the FMI Animal Welfare</p> <p>9 Guidelines did it understand that FMI was telling its</p> <p>10 members that that program, those guidelines, could</p> <p>11 have economic implications?</p> <p>12 <b>A. We were told they could.</b></p> <p>13 Q. So you were aware that there could be</p> <p>14 economic implications of adopting FMI's animal</p> <p>15 welfare program?</p> <p>16 <b>A. That's what we were told.</b></p> <p>17 Q. And that included the certified program,</p> <p>18 right?</p> <p>19 <b>A. That's what we were told.</b></p> <p>20 Q. The economic implication with respect to the</p> <p>21 UEP Certified Program would be higher costs for egg</p> <p>22 producers, right?</p> <p>23 <b>A. That's what we were told.</b></p> <p>24 Q. And that would increase the cost of eggs that</p> <p>25 Publix purchased, right?</p>
<p style="text-align: right;">47</p> <p>1 <b>A. All of them.</b></p> <p>2 Q. And you understood that the certified program</p> <p>3 governs those issues?</p> <p>4 MR. GERMAINE: Objection to form.</p> <p>5 <b>A. According -- according to the document, yes.</b></p> <p>6 Q. Did Publix believe that the FMI guidelines</p> <p>7 improved animal welfare?</p> <p>8 <b>A. It was the industry standard.</b></p> <p>9 Q. Did it believe that the industry standard</p> <p>10 improved animal welfare?</p> <p>11 <b>A. We followed them because we were told to by</b></p> <p>12 <b>our suppliers and by FMI.</b></p> <p>13 Q. And you followed them because you believed</p> <p>14 that they improved animal welfare, right?</p> <p>15 <b>A. Because we were told that they did.</b></p> <p>16 Q. And that was the purpose of the guidelines?</p> <p>17 <b>A. According to our suppliers.</b></p> <p>18 Q. And did you believe that the UEP Certified</p> <p>19 Guidelines -- Certified Program improved animal</p> <p>20 welfare?</p> <p>21 <b>A. Do I believe?</b></p> <p>22 Q. Did Publix believe?</p> <p>23 <b>A. That the UEP Certified Program --</b></p> <p>24 Q. Improved animal welfare for egg-laying hens?</p> <p>25 <b>A. We were told it did.</b></p>	<p style="text-align: right;">49</p> <p>1 <b>A. According to our suppliers.</b></p> <p>2 Q. In fact, you testified in your previous</p> <p>3 deposition that for a time Publix paid a two cent</p> <p>4 surcharge for animal welfare eggs, right?</p> <p>5 MR. GERMAINE: Objection; we're way outside</p> <p>6 the scope of the agreed upon topics.</p> <p>7 MS. ADENDORFF: This relates to the FMI</p> <p>8 guidelines and the cost of those guidelines.</p> <p>9 MR. GERMAINE: I don't think that that's</p> <p>10 true, and I also don't think that that's what the</p> <p>11 agreed upon topic was.</p> <p>12 You can answer the question, Mr. Wilson.</p> <p>13 Q. You testified in your previous deposition</p> <p>14 that for a time Publix paid a two cent surcharge for</p> <p>15 animal welfare eggs, right?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>(Wilson Exhibit 10 was marked for</b></p> <p>18 <b>identification.)</b></p> <p>19 Q. And I marked this as Exhibit 10. This</p> <p>20 document is Bates stamped PUB_EGGS_012286.</p> <p>21 Do you know who Greg Bates is?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Who is Greg Bates?</p> <p>24 <b>A. He's BDD of Dairy Frozen.</b></p> <p>25 Q. And what was his position in 2005, do you</p>



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<p style="text-align: right;">50</p> <p>1 know?</p> <p>2 <b>A. Category manager.</b></p> <p>3 Q. Of what department?</p> <p>4 <b>A. Dairy.</b></p> <p>5 Q. Retail dairy?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And that included purchasing eggs?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And in this e-mail, which appears to be from</p> <p>10 Greg Bates -- do you know who Ken Paramore is?</p> <p>11 <b>A. He worked for Tampa Farms.</b></p> <p>12 Q. Do you know if he also worked for Cal-Maine</p> <p>13 Foods?</p> <p>14 <b>A. He may have worked for Cal-Maine Foods.</b></p> <p>15 Q. In this e-mail he says: "We appreciate the</p> <p>16 excellent service that you consistently provide to</p> <p>17 our stores. We will accept your price increase of</p> <p>18 two cents per dozen to be effective on September</p> <p>19 19th."</p> <p>20 Do you understand that two cents per dozen</p> <p>21 increase to be related to animal welfare?</p> <p>22 MR. GERMAINE: Objection to form.</p> <p>23 <b>A. That's speculation on my part.</b></p> <p>24 Q. You testified that there was a two cent</p> <p>25 increase for the price of eggs for animal welfare,</p>	<p style="text-align: right;">52</p> <p>1 document, that it was in Publix's files in this</p> <p>2 litigation?</p> <p>3 <b>A. Yes, ma'am.</b></p> <p>4 Q. Do you recognize this document?</p> <p>5 <b>A. No.</b></p> <p>6 Q. This document -- well, take a minute to look</p> <p>7 at the document first.</p> <p>8 <b>A. Yes, ma'am. Yes, ma'am.</b></p> <p>9 Q. In the middle of the second paragraph do you</p> <p>10 see where it says: "Our FMI members have taken the</p> <p>11 position, as we state in our FMI-NCCR press release,</p> <p>12 that the animal welfare guidelines will apply both to</p> <p>13 shell eggs and those produced for use as ingredients</p> <p>14 in food products."</p> <p>15 Was that Publix's position?</p> <p>16 <b>A. No.</b></p> <p>17 Q. How -- why not?</p> <p>18 <b>A. There is no one on Publix on this e-mail.</b></p> <p>19 Q. I -- yeah, I agree with that. I'm just</p> <p>20 asking if that statement, which FMI is purporting to</p> <p>21 make on behalf of FMI members, reflect Publix's</p> <p>22 position as a member of FMI?</p> <p>23 MR. GERMAINE: Objection to form.</p> <p>24 Mr. Wilson, are you ready?</p> <p>25 THE WITNESS: Yeah.</p>
<p style="text-align: right;">51</p> <p>1 right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Do you know if this is that increase?</p> <p>4 <b>A. I don't know.</b></p> <p>5 Q. Do you agree with Greg Bates that Cal-Maine</p> <p>6 provided excellent service to your stores?</p> <p>7 MR. GERMAINE: Objection to form. It doesn't</p> <p>8 say anything about Cal-Maine.</p> <p>9 Q. Do you remember that Ken Paramore provided</p> <p>10 excellent service to your stores?</p> <p>11 <b>A. I don't know.</b></p> <p>12 Q. Are you familiar with Ken Paramore's service</p> <p>13 to Publix?</p> <p>14 <b>A. No.</b></p> <p>15 <b>(Wilson Exhibit 11 was marked for</b></p> <p>16 <b>identification.)</b></p> <p>17 Q. You have in front of you what's been marked</p> <p>18 as Exhibit 11. This document is Bates stamped</p> <p>19 PUB_EGGS_010723 and is highly confidential. So</p> <p>20 because of that Bates stamp, it appears that this</p> <p>21 document was produced by Publix in this litigation.</p> <p>22 Do you understand that?</p> <p>23 <b>A. Say that again.</b></p> <p>24 Q. Do you understand that because of that Bates</p> <p>25 stamp, that indicates that Publix produced this</p>	<p style="text-align: right;">53</p> <p>1 Q. Oh, sorry. Does that reflect Publix's</p> <p>2 position?</p> <p>3 <b>A. It reflects FMI's position.</b></p> <p>4 Q. Did Publix share that position?</p> <p>5 <b>A. As a member of FMI?</b></p> <p>6 Q. Or just independently, either way.</p> <p>7 <b>A. That's FMI's position on it. It says so</b></p> <p>8 <b>right here in this letter.</b></p> <p>9 Q. Did Publix adopt the position that FMI's</p> <p>10 animal welfare guidelines should apply to both shell</p> <p>11 eggs and eggs produced for use -- eggs produced for</p> <p>12 use as ingredients in food products?</p> <p>13 <b>A. As a member of FMI.</b></p> <p>14 Q. It did?</p> <p>15 <b>A. As a member of FMI.</b></p> <p>16 Q. Meaning yes, it did, as a member of FMI?</p> <p>17 <b>A. We were told as a member of FMI, yes, ma'am.</b></p> <p>18 Q. Did Publix feel that supporting animal</p> <p>19 welfare was worth the increased cost?</p> <p>20 MR. GERMAINE: Objection. We're again</p> <p>21 outside the scope. The FMI topic is clearly</p> <p>22 Publix's involvement with FMI animal welfare</p> <p>23 efforts during the relevant time period.</p> <p>24 MS. ADENDORFF: And its adoption and support</p> <p>25 of that program and the extent to which it would</p>



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<p style="text-align: right;">54</p> <p>1 adopt that program is relevant to that question.</p> <p>2 MR. GERMAINE: No, it's not. Publix's</p> <p>3 involvement.</p> <p>4 Q. You can answer the question. Would you like</p> <p>5 me to repeat it?</p> <p>6 A. Yes.</p> <p>7 Q. Did Publix feel that supporting FMI's animal</p> <p>8 welfare guidelines was worth the increased cost?</p> <p>9 A. We took the cost.</p> <p>10 Q. And it continued to support the guidelines</p> <p>11 despite the cost?</p> <p>12 A. Yes.</p> <p>13 Q. How closely did Publix follow the development</p> <p>14 of the FMI guidelines?</p> <p>15 A. We didn't.</p> <p>16 (Wilson Exhibit 12 was marked for</p> <p>17 identification.)</p> <p>18 Q. You have in front of you what's been marked</p> <p>19 as Exhibit 12, Bates stamped PUB_EGGS_006504. Have</p> <p>20 you ever seen this document before?</p> <p>21 A. No, ma'am.</p> <p>22 Q. At the top, this appears to be a letter from</p> <p>23 Rose Acre Farms to Mark Dobersch of Publix Super</p> <p>24 Markets. Do you know Mark Dobersch?</p> <p>25 A. I know the name.</p>	<p style="text-align: right;">56</p> <p>1 Q. Were you aware that individuals at Publix</p> <p>2 were receiving updates about the FMI guidelines</p> <p>3 before those guidelines came out?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know of any other ways in which Publix</p> <p>6 followed the development of the FMI Animal Welfare</p> <p>7 Guidelines?</p> <p>8 A. Any other ways?</p> <p>9 Q. Other than being updated, for example, on</p> <p>10 this letter.</p> <p>11 A. Like another letter?</p> <p>12 Q. Other letters or any other ways of getting</p> <p>13 information about those guidelines before they came</p> <p>14 out.</p> <p>15 A. I just told you that there was another</p> <p>16 letter.</p> <p>17 Q. There was another letter?</p> <p>18 A. Yeah. We went over it earlier.</p> <p>19 Q. Correct. Anything else?</p> <p>20 A. Such as?</p> <p>21 Q. Such as updates from FMI itself as the</p> <p>22 guidelines were being developed.</p> <p>23 A. No.</p> <p>24 Q. No, not to your knowledge?</p> <p>25 A. No.</p>
<p style="text-align: right;">55</p> <p>1 Q. Do you know if he works at MSP?</p> <p>2 A. I don't know --</p> <p>3 Q. You don't know his position?</p> <p>4 A. -- exactly where he works, no, ma'am.</p> <p>5 Q. Do you know if he has a role at all related</p> <p>6 to procuring eggs for Publix?</p> <p>7 A. As of March 25th, 2002, if I read this --</p> <p>8 Q. Yeah, go ahead and read it.</p> <p>9 A. Enclosed is packet -- (inaudible.)</p> <p>10 Yes.</p> <p>11 Q. And in this letter it reflects that the FMI</p> <p>12 and NCR will not come out with their recommendations</p> <p>13 until June, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And we just saw that, in fact, FMI's</p> <p>16 guidelines came out in June 2002, correct?</p> <p>17 A. Yes.</p> <p>18 Q. So this is -- this letter dated March 2002</p> <p>19 would be before those guidelines came out, right?</p> <p>20 A. Yes.</p> <p>21 Q. And in this letter it appears that Rose Acre</p> <p>22 Farms is updating someone at Publix about the</p> <p>23 development of the FMI guidelines and their adoption</p> <p>24 of the UEP Certified Program, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">57</p> <p>1 (Wilson Exhibit 13 was marked for</p> <p>2 identification.)</p> <p>3 Q. We've marked this Exhibit 13 or you have in</p> <p>4 front of you Exhibit 13 and this is a highly</p> <p>5 confidential document Bates stamped PUB_EGGS_020571.</p> <p>6 At the top it says: "What Happens If 100% Committed</p> <p>7 Is Changed?"</p> <p>8 Have you ever heard of the 100 percent rule?</p> <p>9 A. 100 percent?</p> <p>10 Q. Rule.</p> <p>11 A. And pertaining to --</p> <p>12 Q. The UEP Certified Program.</p> <p>13 A. Yes.</p> <p>14 Q. Do you know if -- sorry. What was your</p> <p>15 understanding of the 100 percent rule?</p> <p>16 A. They had to be 100 percent compliant.</p> <p>17 Q. In order to be certified?</p> <p>18 A. Yes.</p> <p>19 Q. When did you understand that?</p> <p>20 A. When I read it in the document.</p> <p>21 Q. And when -- was Publix aware that that was a</p> <p>22 feature of the FMI guidelines?</p> <p>23 A. According to the document from our supplier,</p> <p>24 yes.</p> <p>25 Q. Have you ever attended a UEP conference?</p>

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16 (Pages 58 to 61)

<p style="text-align: right;">58</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. When?</p> <p>3 <b>A. 2008, I believe, or 2009 or 2010, one -- it</b></p> <p>4 <b>was during that time period.</b></p> <p>5 Q. Why don't we look at an exhibit. That might</p> <p>6 refresh your recollection.</p> <p>7 <b>A. You probably know better than I do.</b></p> <p>8 <b>(Wilson Exhibit 14 was marked for</b></p> <p>9 <b>identification.)</b></p> <p>10 Q. You have in front of you Exhibit 14, a</p> <p>11 confidential document marked UE0484841. Do you see</p> <p>12 that this is an e-mail exchange between James Wilson</p> <p>13 and Linda Reickard in October 2007?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Flipping to the next page, you can see that</p> <p>16 Linda Reickard is Vice President of the United Egg</p> <p>17 Producers, right?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And she's asking, she says -- the subject</p> <p>20 line is "PR Conference in Denver." Is that the</p> <p>21 animal welfare conference that you recall?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. So is -- was the animal welfare conference in</p> <p>24 November -- excuse me -- yeah, November 2007?</p> <p>25 MR. GERMAINE: Objection to form.</p>	<p style="text-align: right;">60</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And how it was developed?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Did they discuss that FMI adopted the</p> <p>5 certified program?</p> <p>6 <b>A. I don't know.</b></p> <p>7 Q. Did they discuss FMI having any input into</p> <p>8 the final certified program?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Were there any --</p> <p>11 <b>A. Not that I'm aware of.</b></p> <p>12 Q. Were there any representatives from FMI at</p> <p>13 the UEP conference?</p> <p>14 <b>A. I don't think so.</b></p> <p>15 Q. Why did Publix send you to that conference?</p> <p>16 I'm sorry. Did Publix send you to that conference?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Did Publix pay for you to go to that</p> <p>19 conference?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Why did Publix send you to that conference?</p> <p>22 <b>A. To learn.</b></p> <p>23 Q. About what?</p> <p>24 <b>A. About eggs.</b></p> <p>25 Q. About animal welfare related to eggs?</p>
<p style="text-align: right;">59</p> <p>1 Q. Or in 2007?</p> <p>2 MR. GERMAINE: Objection to form.</p> <p>3 Q. Does this refresh your recollection?</p> <p>4 <b>A. Yes.</b></p> <p>5 MR. GERMAINE: I think you called them animal</p> <p>6 welfare conference.</p> <p>7 Q. PR conference for UEP?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Can you tell me what occurred at that -- what</p> <p>10 you recall about that conference?</p> <p>11 <b>A. They -- or the UEP President spoke, several</b></p> <p>12 <b>animal welfare experts spoke.</b></p> <p>13 Q. Was the UEP President Gene Gregory?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And were the experts that spoke at that</p> <p>16 conference experts who had helped develop the</p> <p>17 certified program?</p> <p>18 <b>A. I believe so.</b></p> <p>19 Q. And did that -- at that conference did they</p> <p>20 discuss the details of the certified program?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Did they discuss the development of the</p> <p>23 certified program? That's the end of the question.</p> <p>24 Did they discuss the development of the certified</p> <p>25 program?</p>	<p style="text-align: right;">61</p> <p>1 <b>A. Eggs in general.</b></p> <p>2 Q. Did anyone else from Publix go with you to</p> <p>3 the conference?</p> <p>4 <b>A. James Lucas.</b></p> <p>5 Q. Who was James Lucas?</p> <p>6 <b>A. He was my category manager at the time.</b></p> <p>7 Q. How many days was the conference, do you</p> <p>8 recall?</p> <p>9 <b>A. I think we were two days.</b></p> <p>10 Q. While you were there, did you meet any of</p> <p>11 your counterparts from other grocery stores?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you remember who?</p> <p>14 <b>A. No, not by name, no, ma'am.</b></p> <p>15 Q. Do you remember which grocery stores?</p> <p>16 <b>A. I remember Costco.</b></p> <p>17 Q. Any others?</p> <p>18 <b>A. No, ma'am.</b></p> <p>19 Q. Did you discuss the certified program with</p> <p>20 the individual from Costco?</p> <p>21 <b>A. No, ma'am, we didn't discuss anything.</b></p> <p>22 Q. Have you ever heard of PETA?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. What is PETA?</p> <p>25 <b>A. An animal rights organization.</b></p>

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17 (Pages 62 to 65)

<p style="text-align: right;">62</p> <p>1 Q. What about the Humane Society?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. What is the Humane Society?</p> <p>4 <b>A. Animal rights organization.</b></p> <p>5 Q. Do you recall in the late 1990s or early</p> <p>6 2000s being aware that PETA was putting pressure on</p> <p>7 certain fast food restaurants regarding the treatment</p> <p>8 of caged egg-laying hens?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. What is your recollection of that?</p> <p>11 <b>A. They were putting pressure on fast food</b></p> <p>12 <b>restaurants about the treatment of egg-laying hens.</b></p> <p>13 <b>(Wilson Exhibit 15 was marked for</b></p> <p>14 <b>identification.)</b></p> <p>15 Q. You have in front of you Exhibit 15, which is</p> <p>16 a confidential PETA document marked PETA 81, and you</p> <p>17 will see on the front it appears to be an</p> <p>18 advertisement saying "How Much Cruelty Can You</p> <p>19 Stomach?" www.murderking.com. Does this appear to</p> <p>20 be a parody on the Burger King logo?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Flipping to the second page, do you see a</p> <p>23 picture of a chick?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And then -- you can take a second to read it</p>	<p style="text-align: right;">64</p> <p>1 Q. Do you recall whether PETA ever targeted</p> <p>2 Wendy's as part of its campaign against fast food</p> <p>3 retailers?</p> <p>4 <b>A. This is a PETA document.</b></p> <p>5 Q. Yes. So this refreshes your recollection</p> <p>6 that PETA targeted Wendy's?</p> <p>7 <b>A. Well, you just told me they did.</b></p> <p>8 Q. Well, I'm asking if you know independently.</p> <p>9 <b>A. You mean outside of --</b></p> <p>10 Q. Yes.</p> <p>11 <b>A. I've never seen this document before today.</b></p> <p>12 Q. Are you familiar -- you're familiar generally</p> <p>13 with PETA putting pressure on fast food restaurants,</p> <p>14 though, right?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And this would appear to be part of that</p> <p>17 pressure?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And how does PETA put pressure on companies</p> <p>20 to change their animal welfare practices?</p> <p>21 <b>A. Documents like this.</b></p> <p>22 Q. And those are what --</p> <p>23 <b>A. Sorry.</b></p> <p>24 Q. It's all right.</p> <p>25 MR. GERMAINE: You break it, you buy it.</p>
<p style="text-align: right;">63</p> <p>1 but underneath -- read the -- you might want to read</p> <p>2 the paragraph under "Other Animals Continue to Suffer</p> <p>3 For Burger King."</p> <p>4 <b>A. Where is that at?</b></p> <p>5 Q. It's right in the middle, "Other Animals --</p> <p>6 <b>A. Okay. I'm sorry. Yes, ma'am. Yes, ma'am.</b></p> <p>7 Q. And do you understand that part of PETA's</p> <p>8 campaign against Burger King related to chickens</p> <p>9 being -- and this is a quote from the document --</p> <p>10 that "they go insane from being crowded into cages so</p> <p>11 small that they can't even spread one wing."</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you understand that the Burger King</p> <p>14 campaign by PETA had to do with cage space?</p> <p>15 <b>A. Yes, and broilers.</b></p> <p>16 Q. And broilers.</p> <p>17 <b>A. And pigs and vegetarianism.</b></p> <p>18 <b>(Wilson Exhibit 16 was marked for</b></p> <p>19 <b>identification.)</b></p> <p>20 Q. You have in front of you what's been marked</p> <p>21 Exhibit 16. This is a PETA document marked</p> <p>22 confidential PETA 93.</p> <p>23 MR. GERMAINE: I think it's Exhibit 15.</p> <p>24 <b>A. It's 16.</b></p> <p>25 MR. GERMAINE: I apologize. I'm sorry.</p>	<p style="text-align: right;">65</p> <p>1 Q. Those are what kind of documents?</p> <p>2 <b>A. It's a PETA document.</b></p> <p>3 Q. But what kind of document itself is it other</p> <p>4 than that PETA made it?</p> <p>5 <b>A. A satire.</b></p> <p>6 <b>(Wilson Exhibit 17 was marked for</b></p> <p>7 <b>identification.)</b></p> <p>8 Q. You have in front of what you what's been</p> <p>9 marked Exhibit 17 and this is a printout from the USA</p> <p>10 Today website, an article that appeared in USA Today</p> <p>11 in September 2001, and I'll give you just a second to</p> <p>12 look through the article.</p> <p>13 <b>A. Yes, ma'am.</b></p> <p>14 Q. You see in the first sentence it says:</p> <p>15 "McDonald's buckled first. Then Burger King. Now,</p> <p>16 Wendy's has plans to bolster its animal welfare</p> <p>17 standards following intense pressure from an animal</p> <p>18 rights group."</p> <p>19 Are you aware that McDonald's, Burger King,</p> <p>20 and Wendy's gave in to pressure from an animal rights</p> <p>21 group related to animal welfare standards?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And would that intense pressure involve the</p> <p>24 two documents we just saw?</p> <p>25 MR. GERMAINE: Objection.</p>

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18 (Pages 66 to 69)

<p style="text-align: right;">66</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And the animal rights group it refers to</p> <p>3 there is PETA, right?</p> <p>4 MR. GERMAINE: Objection.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. In the next sentence it says People for the</p> <p>7 Ethical Treatment of Animals, correct?</p> <p>8 <b>A. Yes. It also says in this document to give</b></p> <p>9 <b>them credit is a gross exaggeration.</b></p> <p>10 Q. What -- say that again.</p> <p>11 <b>A. It says, "To give them credit is a gross</b></p> <p>12 <b>exaggeration," Denny Lynch, a Wendy's spokesman.</b></p> <p>13 Q. Uh-huh, true.</p> <p>14 <b>A. He's saying that it's not because of their</b></p> <p>15 <b>pressure.</b></p> <p>16 Q. This article is saying that it is, though,</p> <p>17 right?</p> <p>18 <b>A. The article is talking about the pressure.</b></p> <p>19 <b>Denny Lynch is a spokesman for Wendy's. He's quoted</b></p> <p>20 <b>as saying it's a gross exaggeration, that they were</b></p> <p>21 <b>improving their animal welfare program all along.</b></p> <p>22 Q. Do you see at the bottom of the page it says,</p> <p>23 "Some actions Wendy's will take"?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. The first one is require suppliers to give</p>	<p style="text-align: right;">68</p> <p>1 <b>A. From members of PETA, yes.</b></p> <p>2 Q. And would those animal welfare practices have</p> <p>3 involved the practices of egg farmers or egg</p> <p>4 suppliers?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Do you know whether PETA also put pressure on</p> <p>7 any of your competitors?</p> <p>8 <b>A. According to articles that -- the articles</b></p> <p>9 <b>said that they did.</b></p> <p>10 Q. Was Publix aware of that at the time?</p> <p>11 <b>A. I didn't talk to competitors; according to</b></p> <p>12 <b>articles that were released.</b></p> <p>13 <b>(Wilson Exhibit 18 was marked for</b></p> <p>14 <b>identification.)</b></p> <p>15 Q. Do you recognize this document?</p> <p>16 <b>A. I don't think I've seen it before.</b></p> <p>17 Q. Flip to the third page. Have you seen that</p> <p>18 document? I don't know if I said on the phone but</p> <p>19 this is PETA 17, a highly confidential document.</p> <p>20 <b>A. No, ma'am.</b></p> <p>21 Q. You have not seen this third page before?</p> <p>22 <b>A. No, ma'am.</b></p> <p>23 Q. Who is Clayton Hollis?</p> <p>24 <b>A. He was -- he used to work for Publix.</b></p> <p>25 Q. Do you know what his position was at Publix?</p>
<p style="text-align: right;">67</p> <p>1 egg-laying hens a minimum of 72 square inches of cage</p> <p>2 space?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. So do you understand that when these three</p> <p>5 companies or at least when Wendy's gave in to PETA's</p> <p>6 pressure about animal welfare standards, it increased</p> <p>7 the minimum cage space for its egg-laying hen</p> <p>8 suppliers?</p> <p>9 MR. GERMAINE: Objection to form.</p> <p>10 <b>A. Again, he says he didn't give in to PETA's</b></p> <p>11 <b>pressure, that they were improving their standards</b></p> <p>12 <b>already.</b></p> <p>13 Q. And by improving their standards, Wendy's</p> <p>14 took steps to increase the cage space allotted to the</p> <p>15 egg-laying hens that supplied Wendy's, right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Do you recall in the late 1990s or early</p> <p>18 2000s whether PETA or other similar organizations put</p> <p>19 pressure or -- put pressure on Publix?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. What do you recall?</p> <p>22 <b>A. E-mails.</b></p> <p>23 Q. What kinds of e-mails?</p> <p>24 <b>A. E-mails about our animal welfare practices.</b></p> <p>25 Q. E-mails from PETA?</p>	<p style="text-align: right;">69</p> <p>1 <b>A. It says here Vide President of Public</b></p> <p>2 <b>Affairs, but I'm assuming that's Vice President.</b></p> <p>3 Q. In the first sentence it says: "On behalf of</p> <p>4 Publix CEO Charlie Jenkins, Jr., I'd like to respond</p> <p>5 to your letter of May 24th, 2002." And he is sending</p> <p>6 this letter, Clayton Hollis is sending this letter to</p> <p>7 PETA, right?</p> <p>8 <b>A. Dear Mr. Friedrich.</b></p> <p>9 Q. Correct. And above that it says that Bruce</p> <p>10 Friedrich is Director of Vegan Outreach for PETA,</p> <p>11 right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So Clayton Hollis is saying that this letter</p> <p>14 to PETA is in response to another letter that Publix'</p> <p>15 CEO received from PETA, right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And would this be an example of PETA</p> <p>18 contacting Publix, like you testified about earlier?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. In the second paragraph it says: "Last year</p> <p>21 after Food Marketing Institute announced their</p> <p>22 efforts to develop a collaborative animal welfare</p> <p>23 program, we've committed our company's support and</p> <p>24 endorsement of their endeavor."</p> <p>25 So in responding to PETA, Clayton Hollis</p>

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19 (Pages 70 to 73)

<p style="text-align: right;">70</p> <p>1 cites to the FMI program, animal welfare program, 2 right?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And he says that the company is committed to 5 support and endorse that endeavor, right?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And in fact, Publix did endorse the FMI 8 guidelines once they were released, right?</p> <p>9 MR. GERMAINE: Objection; asked and answered.</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Then he says in the last sentence, last 12 paragraph: "Let me further say that Publix believes 13 animals should be raised, transported and processed 14 using procedures that are clean, safe, and free from 15 cruelty, abuse or neglect. We expect our suppliers 16 to uphold humane practices and we conduct audits of 17 their facilities."</p> <p>18 Does that reflect Publix's position?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And does Publix, in fact, conduct audits of 21 suppliers' facilities related to animal welfare?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Why do you say no?</p> <p>24 <b>A. Third party.</b></p> <p>25 Q. Does Publix arrange for third-party audits or</p>	<p style="text-align: right;">72</p> <p>1 I'll skip over the parenthesis, "are acceptable since 2 these guidelines are based on the science of Dr. Joy 3 Mench's paper that discusses the issue and are in 4 line with the fast-food standards."</p> <p>5 By the "fast-food standards," do you 6 understand PETA to be referring to the standards 7 adopted by McDonald's, Burger King, and Wendy's?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. So PETA here is telling Publix that as long 10 as Publix accepts the FMI Animal Welfare Guidelines 11 with respect to hen space, that those guidelines are, 12 quote, acceptable to PETA, right?</p> <p>13 <b>A. That's what they're saying.</b></p> <p>14 Q. Do you know if anyone at Publix discussed 15 these letters when they came in with the egg buyers 16 or egg procurement team at Publix?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Were you on the egg procurement team in 2002?</p> <p>19 <b>A. No.</b></p> <p>20 <b>(Wilson Exhibit 19 was marked for</b> 21 <b>identification.)</b></p> <p>22 Q. You have in front of you what's been marked 23 as Exhibit 19, and it's Bates stamped 24 PUB_EGGS_011763, and it appears to be an e-mail from 25 Mike Bynum to Greg Bates, Dave Cerra and Bessie</p>
<p style="text-align: right;">71</p> <p>1 review the results of third-party audits related to 2 animal welfare?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Do you know if it does so with respect to its 5 egg suppliers?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Have you ever seen the results of those 8 audits?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Who would receive the results of the animal 11 welfare audits at Publix?</p> <p>12 <b>A. CQA.</b></p> <p>13 Q. In the next sentence it says: "We endorse 14 the efforts of our industry organization, FMI, as 15 they develop a collaborative animal welfare program 16 with the assistance of animal welfare experts."</p> <p>17 So, again, Publix is relying on the animal 18 welfare experts consulted by FMI in endorsing those 19 guidelines, right?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Looking back at the first page, this appears 22 to be PETA's response to Clayton Hollis on July 9th, 23 2002, and if you want to just look at the last bullet 24 point on that first page, it says: "The guidelines, 25 assuming that there is a guarantee of usable space,"</p>	<p style="text-align: right;">73</p> <p>1 Foster. Do you know who Mike Bynum is?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Who is Mike Bynum?</p> <p>4 <b>A. He owned Tampa Farms.</b></p> <p>5 Q. And who are Greg Bates, Dave Cerra and Bessie 6 Foster?</p> <p>7 <b>A. Greg Bates is Category Manager, Dave Cerra</b> 8 <b>was BDD and Bessie Foster was the egg buyer.</b></p> <p>9 Q. And all three of those individuals work for 10 Publix and had responsibility for procuring eggs, 11 right?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So in this e-mail, which is dated June 2002, 14 it says: "Following up on the animal welfare issue, 15 I'm advised that Kroger's CEO received a letter like 16 the one received by Charlie Jenkins, Jr., as well as 17 A &amp; P. Safeway received their letter earlier. 18 Kroger has indicated it will follow FMI's guidelines 19 on humane treatment when they are released."</p> <p>20 Were you aware that Tampa Farms was updating 21 the Publix egg department about other companies' 22 letters it was receiving similar to letters received 23 by Publix' CEO?</p> <p>24 <b>A. No.</b></p> <p>25 <b>(Wilson Exhibit 20 was marked for</b></p>

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20 (Pages 74 to 77)

<p style="text-align: right;">74</p> <p>1 <b>identification.)</b></p> <p>2 Q. You have in front of you Exhibit 20. Have</p> <p>3 you seen this document before?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. What is this document?</p> <p>6 <b>A. Animal Rights Foundation of Florida,</b></p> <p>7 <b>Incorporated.</b></p> <p>8 Q. And it's a letter from that group to Charlie</p> <p>9 Jenkins, Jr., CEO of Publix, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. In August of 2001?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. How have you seen this document?</p> <p>14 <b>A. How have I seen it? I've read it.</b></p> <p>15 Q. In what capacity? How did you first see this</p> <p>16 document?</p> <p>17 <b>A. I don't understand what you mean.</b></p> <p>18 Q. When did you first see this document?</p> <p>19 <b>A. I don't remember an exact date.</b></p> <p>20 Q. Was it in connection with this litigation or</p> <p>21 was it outside of this litigation?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. In connection?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Number 5 on the first page says: "Stop</p>	<p style="text-align: right;">76</p> <p>1 <b>A. No, ma'am.</b></p> <p>2 Q. Did Publix take these concerns seriously?</p> <p>3 <b>A. Yes, ma'am.</b></p> <p>4 Q. Why did Publix not respond to the other</p> <p>5 letters, do you know?</p> <p>6 <b>A. We choose not to respond.</b></p> <p>7 Q. But Publix saw this as a serious issue,</p> <p>8 right?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And it addressed this issue, in part, by</p> <p>11 adopting FMI's guidelines, right?</p> <p>12 MR. GERMAINE: Objection to form.</p> <p>13 <b>A. We were told that we should adopt the</b></p> <p>14 <b>guidelines by our suppliers and by FMI.</b></p> <p>15 Q. And it did in fact adopt the guidelines,</p> <p>16 right?</p> <p>17 <b>A. Yes.</b></p> <p>18 MR. GERMAINE: Objection; asked and answered.</p> <p>19 Q. And did that address the concerns that these</p> <p>20 animal welfare groups were presenting to Publix's CEO</p> <p>21 at the time?</p> <p>22 MR. GERMAINE: Objection.</p> <p>23 <b>A. Not all of them, no, ma'am.</b></p> <p>24 Q. Did it address concerns related to cage</p> <p>25 space?</p>
<p style="text-align: right;">75</p> <p>1 buying eggs from suppliers that give hens less than</p> <p>2 85 square inches of space per bird and phase out</p> <p>3 purchases from suppliers that raise hens in battery</p> <p>4 cages."</p> <p>5 So do you understand that to mean that Animal</p> <p>6 Rights Foundation of Florida is writing to Publix'</p> <p>7 CEO regarding its policies of buying eggs from</p> <p>8 suppliers who keep their hens in certain size cages?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And did you understand that this was</p> <p>11 generally an issue for the animal welfare activists</p> <p>12 contacting Publix around 2001?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And what was Publix's response to these</p> <p>15 animal welfare letters?</p> <p>16 <b>A. We didn't respond.</b></p> <p>17 Q. We just saw in the last set of documents --</p> <p>18 or I'll get the exact number. Hold on.</p> <p>19 <b>A. To PETA?</b></p> <p>20 Q. Yeah. Exhibit 18 demonstrated that Publix</p> <p>21 did respond to PETA, right?</p> <p>22 <b>A. On that one, yes, ma'am.</b></p> <p>23 Q. Do you know of any other time that Publix</p> <p>24 responded to an animal rights organization</p> <p>25 complaining about animal welfare?</p>	<p style="text-align: right;">77</p> <p>1 <b>A. No, ma'am.</b></p> <p>2 Q. How did it not address that concern?</p> <p>3 <b>A. I don't think the UEP standards allow 85</b></p> <p>4 <b>square inches, and they want us to phase out all</b></p> <p>5 <b>purchases from hens that are in cages.</b></p> <p>6 Q. And Publix has not done that, right?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Why has Publix not done that?</p> <p>9 <b>A. It's not sustainable, in my opinion.</b></p> <p>10 Q. Why is that?</p> <p>11 <b>A. It's too expensive.</b></p> <p>12 Q. So Publix was willing to pay more for eggs</p> <p>13 raised in a humane way but not necessarily so much so</p> <p>14 that it wants to pay for cage-free eggs for all of</p> <p>15 its eggs, right?</p> <p>16 MR. GERMAINE: Objection.</p> <p>17 <b>A. We are in the position that we want to give</b></p> <p>18 <b>our customers a choice.</b></p> <p>19 Q. So you want to have a cage-free option but</p> <p>20 not necessarily all of the eggs be cage free?</p> <p>21 <b>A. Yes.</b></p> <p>22 MS. CRABTREE: Could I get the Bates for</p> <p>23 Exhibit 20, please?</p> <p>24 MS. ADENDORFF: It's PUB_EGGS_011786.</p> <p>25 MS. CRABTREE: Thank you.</p>



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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 (Wilson Exhibit 21 was marked for 2 identification.) 3 Q. Do you have in front of you what has been 4 marked Exhibit 21? 5 <b>A. It hasn't been marked yet.</b> 6 Q. Got it. Do you recognize this document? 7 <b>A. Yes, ma'am.</b> 8 Q. How do you recognize it? 9 <b>A. Animal Rights Foundation of Florida letter</b> 10 <b>2006.</b> 11 Q. And this is a letter -- another letter to 12 Publix CEO Charlie Jenkins, Jr., right? 13 <b>A. Yes.</b> 14 Q. Looking at the second to last paragraph, it 15 says: "Egg-laying hens in bare wire coops called 16 battery change cages are the most intensively 17 confined animal in the United States. The cages are 18 so restrictive that the birds cannot even stretch 19 their wings let alone engage in other natural 20 behaviors, such as nesting, perching and dust 21 bathing. Birds in battery cages suffer immensely." 22 Do you see that? 23 <b>A. Yes.</b> 24 Q. So in 2006 the animal rights activists were 25 still making an issue of egg-laying hen cages, right?</p>	<p style="text-align: right;">80</p> <p>1 Q. Do you know -- he was in 2006, right? 2 <b>A. Yes.</b> 3 Q. Do you know if this document was sent over to 4 Greg? 5 <b>A. I don't know. I would -- no, ma'am, I don't</b> 6 <b>know.</b> 7 Q. Can you describe for me when Publix receives 8 complaints relating to its egg purchases and animal 9 welfare, what does it do with those complaints? 10 <b>A. They respond. We receive them and thank you</b> 11 <b>for the concern and then they -- they basically give</b> 12 <b>them an answer just like that, they respond.</b> 13 Q. And who at Publix is in charge of responding 14 to those letters? 15 <b>A. Media relations.</b> 16 Q. And would anyone at media relations contact 17 the egg buyers to let them know that they've received 18 these complaints? 19 <b>A. Not always, no, ma'am.</b> 20 Q. Would they ever? 21 <b>A. I'm not going to say they never would.</b> 22 Q. Do you know of any occasion on which the egg 23 department was notified of complaints it was 24 receiving related to the animal welfare of eggs -- of 25 hens laying eggs?</p>
<p style="text-align: right;">79</p> <p>1 MR. BJORK: Did you have a chance to read the 2 document, the whole document? 3 <b>A. Yes.</b> 4 Q. Do you want to review the document? 5 <b>A. No.</b> 6 Q. Okay. So it's still an issue in 2006? 7 MR. GERMAINE: Objection. 8 <b>A. Yes.</b> 9 Q. What did -- what did Publix understand in 10 2006 was -- what did these animal rights groups want 11 Publix to do in 2006? 12 <b>A. Stop using battery cages.</b> 13 Q. So it wanted the -- wanted Publix to go to 14 cage-free eggs only? 15 <b>A. That's what they say.</b> 16 Q. And as you said, Publix is not going to do 17 that, right? 18 MR. GERMAINE: Objection. 19 <b>A. Today, no, ma'am.</b> 20 Q. And at the top of this letter it says in 21 handwriting, "Greg, please give me a call to discuss. 22 Paul K." 23 Now, you testified Greg Bates is category 24 manager for eggs, right? 25 <b>A. He was.</b></p>	<p style="text-align: right;">81</p> <p>1 <b>A. Yes.</b> 2 Q. When? 3 <b>A. The 2009 proxy.</b> 4 Q. And we'll get there in just a second. Do you 5 know if PETA responded to this letter in 2006? 6 <b>A. Do I know if PETA responded to the letter?</b> 7 Q. I'm sorry. Publix responded to this letter 8 in 2006? 9 <b>A. I don't know.</b> 10 <b>(Wilson Exhibit 22 was marked for</b> 11 <b>identification.)</b> 12 Q. You have in front of you what's been marked 13 as Exhibit 22. This is a confidential document Bates 14 stamped CM00239913. Have you ever seen this document 15 before? 16 <b>A. No.</b> 17 Q. This is -- you mentioned earlier that Gene 18 Gregory was the President of UEP, correct? 19 <b>A. Yes.</b> 20 Q. Reading this e-mail, it appears to be from 21 Gene Gregory to a variety of individuals and it says: 22 "A friend sent me this e-mail of a story in the 23 Cincinnati Post. Additionally, producers have called 24 me telling me that Publix and A&amp;P have already 25 contacted their egg supplier about meeting the</p>



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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 guidelines. Either they are afraid of PETA or FMI 2 has already alerted their members to be expecting the 3 guidelines very soon." 4 Do you know if Publix was afraid of PETA in 5 2002? 6 <b>A. No.</b> 7 Q. You don't know or Publix was not? 8 <b>A. No.</b> 9 Q. Which no? 10 <b>A. Publix was not.</b> 11 Q. Why was Publix not afraid of PETA? 12 <b>A. It's not good to be afraid.</b> 13 Q. Good answer. Was PETA cause -- was PETA -- 14 you testified earlier that PETA was causing -- was 15 campaigning against certain -- certain fast-food 16 chains, correct? 17 <b>A. Yes.</b> 18 Q. And we saw some examples of those campaigns 19 and those parodies. You called them satires, right? 20 <b>A. Yes, ma'am.</b> 21 Q. And those were some kind of nasty documents, 22 right? 23 MR. GERMAINE: Objection. 24 <b>A. Yes.</b> 25 Q. Was Publix concerned about getting those</p>	<p style="text-align: right;">84</p> <p>1 <b>A. Yes, ma'am.</b> 2 Q. Do you own stock in Publix? 3 <b>A. Yes, ma'am.</b> 4 Q. Is stock doing well? 5 MR. GERMAINE: Objection; outside the scope. 6 MR. BJORK: He's smiling. 7 MR. GERMAINE: You don't have to answer. 8 (Wilson Exhibit 23 was marked for 9 identification.) 10 Q. Looking at Exhibit 23, are you familiar with 11 this document? 12 MS. ADENDORFF: For those on the phone, it's 13 a highly confidential document Bates stamped 14 PUB_EGGS_011875. 15 <b>A. Yes, ma'am.</b> 16 Q. How are you familiar with this document? 17 <b>A. I've seen it before.</b> 18 Q. Have you seen it in connection with this 19 litigation? 20 <b>A. Yes, ma'am.</b> 21 Q. Have you seen it outside of this litigation? 22 <b>A. Yes.</b> 23 Q. When did you first become -- well, what does 24 this e-mail relate to? 25 <b>A. Stockholder -- I'm sorry. I can't talk all</b></p>
<p style="text-align: right;">83</p> <p>1 kinds of attacks against Publix? 2 <b>A. No.</b> 3 Q. Was Publix concerned about bad press for its 4 stores? 5 <b>A. No.</b> 6 Q. Why not? 7 <b>A. Because we don't do things to get bad press.</b> 8 MR. GERMAINE: Also a good answer. 9 MS. ADENDORFF: I'll take a break now. 10 THE WITNESS: Okay. 11 THE VIDEOGRAPHER: We're now off the record. 12 The time is 2:39 p.m. 13 (Recess from 2:39 p.m. until 2:48 p.m.) 14 THE VIDEOGRAPHER: We're now on the record. 15 The time is 2:48 p.m. 16 BY MS. ADENDORFF: 17 Q. Is Publix a publicly traded company? 18 <b>A. No.</b> 19 Q. Is it a privately held company? 20 <b>A. Yes.</b> 21 Q. Who do you understand owns Publix? 22 <b>A. Employees.</b> 23 Q. It's an employee-owned company, right? 24 <b>A. Yes, ma'am.</b> 25 Q. And the employees own stock in that company?</p>	<p style="text-align: right;">85</p> <p>1 <b>the sudden. Stockholder proposal.</b> 2 Q. In February 2009, that's the date of this 3 e-mail, right? 4 <b>A. Yes, 4:32.</b> 5 Q. What do you know about -- well, let me go a 6 little further. Going down below where it says, 7 "Shareholder Resolution Regarding Animal Welfare 8 Progress Report," do you see that? 9 <b>A. Yes.</b> 10 Q. Underneath that it says: "Resolved, that 11 shareholders request that the board of directors 12 issue a report detailing any progress made toward 13 adopting animal welfare policies pertaining to the 14 purchase of pork, eggs and poultry. The report 15 should be prepared by October 2009 and should exclude 16 proprietary information." 17 So this is a apparent shareholder resolution 18 related to animal welfare, right? 19 <b>A. Yes.</b> 20 Q. When did you first learn about the 21 shareholder proposal? 22 <b>A. Probably 2009.</b> 23 Q. How did you learn about it? 24 <b>A. I was on the egg desk.</b> 25 Q. Did someone contact you to notify you about</p>

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23 (Pages 86 to 89)

<p style="text-align: right;">86</p> <p>1 this proposal?</p> <p>2 <b>A. I was part of -- I'm a stockholder, so --</b></p> <p>3 Q. Did you learn through being a stockholder?</p> <p>4 <b>A. This comes in our report.</b></p> <p>5 Q. And did you -- were you contacted in any way</p> <p>6 as -- your capacity as egg buyer at the time related</p> <p>7 to this shareholder proposal?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. By who?</p> <p>10 <b>A. James Lucas, who was my boss.</b></p> <p>11 Q. And what did he tell you?</p> <p>12 <b>A. That we needed to -- that we should -- we had</b></p> <p>13 <b>to help prepare the information.</b></p> <p>14 Q. Help prepare the information in response to</p> <p>15 this proposal?</p> <p>16 <b>A. Yes, ma'am.</b></p> <p>17 Q. Do you see at the bottom -- well, let me back</p> <p>18 up. As part of this proposal in this e-mail do you</p> <p>19 see that it says: "Egg-laying hens are typically</p> <p>20 confined to tiny wire cages so small that the birds</p> <p>21 cannot even spread a single wing." Do you see that?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And that's a similar complaint that we've</p> <p>24 seen reflected in the animal activists letters,</p> <p>25 right?</p>	<p style="text-align: right;">88</p> <p>1 about the abuse of farmed animals?</p> <p>2 MR. GERMAINE: Object to the form.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. What is your understanding of what this</p> <p>5 shareholder proposal was intended to do?</p> <p>6 <b>A. To increase the number of cage-free eggs we</b></p> <p>7 <b>sell.</b></p> <p>8 Q. Was it also intended to request Publix to</p> <p>9 prepare a report on its animal welfare policies?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. As those policies pertain, among other</p> <p>12 things, to eggs, right?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So you were involved in drafting Publix's</p> <p>15 response to this proposal, right?</p> <p>16 <b>A. Was involved in drafting? I wouldn't say I</b></p> <p>17 <b>was involved in drafting it.</b></p> <p>18 Q. How did you help in Publix's response to this</p> <p>19 proposal?</p> <p>20 <b>A. Information.</b></p> <p>21 Q. What information did you provide?</p> <p>22 <b>A. Our suppliers.</b></p> <p>23 Q. You -- explain that. Information about your</p> <p>24 suppliers?</p> <p>25 <b>A. Yes, ma'am.</b></p>
<p style="text-align: right;">87</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And it says: "While Publix's own brand of</p> <p>3 eggs is cage free, most eggs it sells are not."</p> <p>4 That's correct, right?</p> <p>5 MR. GERMAINE: Objection.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And it says in the next paragraph: "As these</p> <p>8 abuses have become a matter of public concern, many</p> <p>9 of Publix's competitors have enacted policies to</p> <p>10 reduce the sale of animal products produced under the</p> <p>11 cruelest conditions."</p> <p>12 Then it goes on to discuss the policies</p> <p>13 adopted by Safeway, Harris Teeter and Winn Dixie,</p> <p>14 right?</p> <p>15 <b>A. I don't -- oh, yes, ma'am. I see Winn Dixie</b></p> <p>16 <b>at the bottom.</b></p> <p>17 Q. So at this time, Publix was aware of Safeway,</p> <p>18 Harris Teeter and Winn Dixie having certain different</p> <p>19 animal welfare policies, right?</p> <p>20 <b>A. According to this letter.</b></p> <p>21 Q. In the next paragraph it says the policies of</p> <p>22 these companies and others, including Burger King,</p> <p>23 Carl's Jr., and Hardee's, are in line with a growing</p> <p>24 public concern about the abuse of farmed animals."</p> <p>25 Was Publix aware of a growing public concern</p>	<p style="text-align: right;">89</p> <p>1 Q. So the identities of your suppliers?</p> <p>2 <b>A. Yes, ma'am.</b></p> <p>3 Q. Anything else about your suppliers?</p> <p>4 <b>A. The standards.</b></p> <p>5 Q. And who did you provide this information to?</p> <p>6 <b>A. James Lucas.</b></p> <p>7 Q. And what standards are you referring to?</p> <p>8 <b>A. The fact that they were all members of the</b></p> <p>9 <b>UEP.</b></p> <p>10 Q. UEP Certified Program?</p> <p>11 <b>A. Yes, ma'am.</b></p> <p>12 Q. And all your suppliers in 2009 were members</p> <p>13 of the UEP Certified Program?</p> <p>14 <b>A. Yes, ma'am.</b></p> <p>15 Q. So you provided James Lucas with information</p> <p>16 about your suppliers and their conformance with the</p> <p>17 UEP Certified Program. Is there anything else you</p> <p>18 provided James Lucas in response to this shareholder</p> <p>19 proposal?</p> <p>20 <b>A. No.</b></p> <p>21 Q. What did James Lucas tell you about the</p> <p>22 shareholder proposal?</p> <p>23 <b>A. Just this.</b></p> <p>24 Q. Just provided you the proposal?</p> <p>25 <b>A. Yes, ma'am.</b></p>

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24 (Pages 90 to 93)

<p style="text-align: right;">90</p> <p>1 Q. Did he tell you that Publix intended to 2 oppose the proposal?</p> <p>3 <b>A. That was our stance on it, yes, ma'am.</b></p> <p>4 Q. Do you know why Publix intended to oppose the 5 proposal?</p> <p>6 <b>A. Because we were following the best 7 standards -- the industry standards that we had at 8 the time.</b></p> <p>9 Q. Are there any other standards that you now 10 feel are better than the UEP certified standards?</p> <p>11 <b>A. No, ma'am.</b></p> <p>12 Q. Do you know if this proposal was, in fact, 13 submitted to the shareholders in 2009 of Publix?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And do you know whether it was voted down?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. It was voted down?</p> <p>18 <b>A. Yes.</b></p> <p>19 <b>(Wilson Exhibit 24 was marked for 20 identification.)</b></p> <p>21 Q. You have in front of you what's been marked 22 as Exhibit 24, and this is an article, a reprint of 23 an article from Feedstuffs in March 4th -- on 24 March 4th, 2002. Have you ever heard of Feedstuffs?</p> <p>25 <b>A. No, ma'am.</b></p>	<p style="text-align: right;">92</p> <p>1 December 3rd, 2001, is to prevent individual grocery 2 and restaurant companies from getting picked off one 3 by one by animal rights welfare activists groups, 4 especially People for the Ethical Treatment of 5 Animals, that are threatening confrontations and 6 other negative attention if those companies don't 7 hand out rigorous animal husbandry rules for 8 suppliers."</p> <p>9 Was Publix's goal in participating in the 10 program avoiding being picked off by PETA?</p> <p>11 <b>A. No.</b></p> <p>12 Q. If Publix did not participate in FMI's 13 industrywide standards, animal welfare standards, was 14 it concerned that it would be singled out and 15 attacked by PETA?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Do you know if other industry competitors 18 were concerned about being picked off by PETA?</p> <p>19 <b>A. I don't know.</b></p> <p>20 Q. But it appears that FMI was concerned about 21 individual grocery companies being picked off by 22 PETA, right?</p> <p>23 <b>A. Yes.</b></p> <p>24 <b>(Wilson Exhibit 25 was marked for 25 identification.)</b></p>
<p style="text-align: right;">91</p> <p>1 Q. In this article the title is: "FMI, NCCR 2 issue report aimed at uniform husbandry," correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. I'll just give you a second to look at it, at 5 the article.</p> <p>6 MR. GERMAINE: You can take as much time as 7 you need to read the article, Mr. Wilson.</p> <p>8 Q. Yeah.</p> <p>9 <b>A. Yes, ma'am.</b></p> <p>10 Q. Do you see in the first page, in the first 11 sentence it says: "The Food Marketing Institute and 12 the National Council of Chain Restaurants issued an 13 anxiously awaited interim report last week that's 14 intended to lead to consistent guidelines for 15 husbandry for use by meat and poultry suppliers."</p> <p>16 And that confirms your under -- Publix's 17 understanding and your understanding that the FMI's 18 goal was to get consistent guidelines for animal 19 husbandry, right?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. For use across the industry?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Skipping down to the third paragraph, it 24 says: "The concept, as explained last year by FMI 25 Chief Executive Officer Tim Hammond, Feedstuffs,</p>	<p style="text-align: right;">93</p> <p>1 Q. You have in front of you what's been marked 2 as Exhibit 25. This is an article written by Karen 3 Brown and Jill Hollingsworth of the Food Marketing 4 Institute and the title of the article is: "The Food 5 Marketing Institute and the National Council of Chain 6 Restaurants: Animal welfare in the retail food 7 industry in the United States of America."</p> <p>8 And this is a rather long article so I'm 9 going to direct you to a certain part of it. On the 10 first page, do you see the end of the second 11 paragraph it says: "However, because of the 12 visibility, easy access and name recognition of food 13 retailers, supermarkets and restaurants are often 14 used as the catalyst to bring about awareness and 15 change throughout the food chain."</p> <p>16 Do you agree that supermarkets are 17 particularly visible to consumers in the food chain?</p> <p>18 <b>A. Supermarkets are visibly --</b></p> <p>19 Q. Are visible to consumers?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Because they interact directly with 22 consumers, right?</p> <p>23 <b>A. Because they're in our stores all the time.</b></p> <p>24 Q. Right. And they have name recognition with 25 consumers, right?</p>

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25 (Pages 94 to 97)

<p style="text-align: right;">94</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. So are they particularly vulnerable to bad</p> <p>3 press and campaigns from organizations like PETA?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Are they more vulnerable than egg producers</p> <p>6 that consumers are not familiar with?</p> <p>7 MR. GERMAINE: Objection to form; no</p> <p>8 foundation, calls for speculation.</p> <p>9 <b>A. And that's speculative.</b></p> <p>10 Q. Are most consumers familiar with egg</p> <p>11 producers, certain egg producers' names, for example?</p> <p>12 MR. GERMAINE: Objection to form.</p> <p>13 <b>A. Like Eggland's Best.</b></p> <p>14 Q. That's a brand name, but, say, Cal-Maine</p> <p>15 foods?</p> <p>16 MR. GERMAINE: Objection.</p> <p>17 <b>A. Are most --</b></p> <p>18 Q. In your understanding, are most consumers</p> <p>19 aware of the manufacturers of eggs and their names?</p> <p>20 <b>A. Yes, ma'am.</b></p> <p>21 Q. When eggs -- when consumers buy eggs in</p> <p>22 Publix's stores, all they see is that it's Publix</p> <p>23 brand eggs, right?</p> <p>24 MR. GERMAINE: Objection to form.</p> <p>25 <b>A. Commodity eggs?</b></p>	<p style="text-align: right;">96</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 <b>A. I don't know.</b></p> <p>3 Q. Do you agree with the statement here in this</p> <p>4 article that supermarkets can act as a catalyst to</p> <p>5 bring about awareness and change throughout the food</p> <p>6 chain?</p> <p>7 <b>A. I don't know.</b></p> <p>8 Q. Has Publix been a leader to bring about</p> <p>9 awareness and change on any particular social issues</p> <p>10 that you're aware of?</p> <p>11 <b>A. Social issues? No, ma'am, not that I'm aware</b></p> <p>12 <b>of.</b></p> <p>13 Q. Has Publix led on animal welfare by adopting</p> <p>14 the animal welfare guidelines of FMI?</p> <p>15 <b>A. At the same time everyone else adopted it?</b></p> <p>16 Q. Yes.</p> <p>17 <b>A. So we adopted it at the same time everyone</b></p> <p>18 <b>else adopted it.</b></p> <p>19 Q. Correct. Is that right?</p> <p>20 <b>A. We adopted it at the same time. I mean,</b></p> <p>21 <b>that's -- you said were we a leader in that. We did</b></p> <p>22 <b>it at the same time that everyone else did it.</b></p> <p>23 <b>(Wilson Exhibit 26 was marked for</b></p> <p>24 <b>identification.)</b></p> <p>25 Q. In front of you is Exhibit 26, Bates stamped</p>
<p style="text-align: right;">95</p> <p>1 Q. Correct.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Shell eggs, white shell eggs that are not</p> <p>4 specialty eggs?</p> <p>5 MR. GERMAINE: Objection.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. So they are not familiar with, for example,</p> <p>8 Cal-Maine's name even if Cal-Maine provided the eggs</p> <p>9 in the Publix carton?</p> <p>10 <b>A. It says produced by Cal-Maine on the package.</b></p> <p>11 Q. But not in particularly big lettering, right?</p> <p>12 MR. GERMAINE: Objection to form.</p> <p>13 <b>A. It says it on the package.</b></p> <p>14 Q. Where on the package?</p> <p>15 <b>A. On the package.</b></p> <p>16 Q. Is it the main name on the carton or is that</p> <p>17 Publix's name?</p> <p>18 <b>A. It says Publix, produced by Cal-Maine.</b></p> <p>19 Q. Does Publix consider itself a leader in the</p> <p>20 food industry?</p> <p>21 <b>A. In the food -- supermarket industry?</b></p> <p>22 Q. In the supermarket industry.</p> <p>23 <b>A. Yes, ma'am.</b></p> <p>24 Q. And can it act as catalyst to bring about</p> <p>25 awareness and change throughout the food chain?</p>	<p style="text-align: right;">97</p> <p>1 PUB_EGGS_021031. Do you recognize this document?</p> <p>2 <b>A. No.</b></p> <p>3 Q. This document says it's a draft revision of</p> <p>4 Publix's animal welfare statement in July 18, 2008,</p> <p>5 right?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Do you know of any revision to Publix's</p> <p>8 animal welfare policy in 2008?</p> <p>9 <b>A. No, ma'am.</b></p> <p>10 Q. At the very end of the first sentence here it</p> <p>11 says: "At all times these procedures shall be</p> <p>12 consistent with the industry best practices and</p> <p>13 comply with all animal handling, animal welfare</p> <p>14 guidelines established by each respective species</p> <p>15 industry organization."</p> <p>16 When it refers there to each respective</p> <p>17 species industry organization, for egg-laying hens</p> <p>18 specifically, would that be the UEP Certified</p> <p>19 Program?</p> <p>20 <b>A. The producers?</b></p> <p>21 Q. Yes.</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And so in 2008, this document at least</p> <p>24 reflects that Publix was still supporting the UEP</p> <p>25 Certified Guidelines, right?</p>

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<p style="text-align: right;">98</p> <p>1 MR. GERMAINE: Objection to form.</p> <p>2 <b>A. We were supporting the -- we were still</b></p> <p>3 <b>supporting the supplier, our suppliers.</b></p> <p>4 Q. And the UEP Certified Program particularly,</p> <p>5 right?</p> <p>6 <b>A. It doesn't say that in this. This -- it</b></p> <p>7 <b>talks about all of the industry organizations and our</b></p> <p>8 <b>suppliers.</b></p> <p>9 Q. Was one of those industry organizations UEP</p> <p>10 and its certified program, in your experience as the</p> <p>11 egg buyer?</p> <p>12 <b>A. Our egg suppliers.</b></p> <p>13 Q. That reminds me. Sorry.</p> <p>14 <b>A. That's all right.</b></p> <p>15 Q. Flip back to Exhibit 23. This was the</p> <p>16 shareholder proposal we looked at earlier, right?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And you mentioned that you provided</p> <p>19 information to James Lucas, your boss, for Publix's</p> <p>20 response to that proposal, right?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And that you specifically told him that your</p> <p>23 company buys UEP certified eggs, right?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. Looking at the second page, at the draft</p>	<p style="text-align: right;">100</p> <p>1 <b>identification.)</b></p> <p>2 Q. You have in front of you Exhibit 27, and I</p> <p>3 represent that this is a printout from Publix's</p> <p>4 public website on April 13th of this year in their</p> <p>5 "Position Statement" section of the website, and you</p> <p>6 will see there's one question there that says: "What</p> <p>7 is Publix's position on animal welfare?" Right?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. Why would Publix have this on its website?</p> <p>10 <b>A. Information.</b></p> <p>11 Q. Information for consumers concerned about</p> <p>12 animal welfare?</p> <p>13 <b>A. Yes.</b></p> <p>14 MR. GERMAINE: Objection to the question as</p> <p>15 outside the scope of the agreed upon topics. You</p> <p>16 can answer the question.</p> <p>17 Q. At the end of the first paragraph there,</p> <p>18 underneath that question, it says: "At all times</p> <p>19 these procedures shall be consistent with industry</p> <p>20 best practices and comply with all animal</p> <p>21 handling/animal welfare guidelines established by</p> <p>22 each respective species industry organization."</p> <p>23 Now, that's the same statement we just saw in</p> <p>24 the 2008.</p> <p>25 <b>A. 2009.</b></p>
<p style="text-align: right;">99</p> <p>1 response here that Publix put together, it says:</p> <p>2 "Eggs. The company purchases fresh eggs from</p> <p>3 suppliers that have implemented programs in the</p> <p>4 interest of animal welfare. 100 percent of the eggs</p> <p>5 purchased by the company are either cage free or</p> <p>6 certified by the United Egg Producers."</p> <p>7 Does that sentence reflect the information</p> <p>8 that you provided to James Lucas?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So that information made its way into</p> <p>11 the actual response used for the shareholder</p> <p>12 proposal, right?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And it says that the company has implemented</p> <p>15 programs in the interest of animal welfare, right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. And then it cites the UEP Certified Program?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. So is it saying there that the UEP Certified</p> <p>20 Program has been implemented in the interest of</p> <p>21 animal welfare?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And this was in 2009, right?</p> <p>24 <b>A. Yes.</b></p> <p>25 <b>(Wilson Exhibit 27 was marked for</b></p>	<p style="text-align: right;">101</p> <p>1 Q. 2009 and 2008, right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. So this statement today that's on Publix's</p> <p>4 website has not changed since 2008 or 2009?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. And is that because Publix still</p> <p>7 believes that the FMI Animal Welfare Guidelines</p> <p>8 improve animal welfare?</p> <p>9 <b>A. That's still the industry standard.</b></p> <p>10 Q. And FM -- and Publix still supports those</p> <p>11 guidelines, right?</p> <p>12 <b>A. As the industry standard.</b></p> <p>13 Q. Because it believes that those industry</p> <p>14 standards improve animal welfare?</p> <p>15 <b>A. That's the industry standard, so we follow</b></p> <p>16 <b>it.</b></p> <p>17 Q. Do they follow the standard in an effort to</p> <p>18 assure that their products are produced in a way that</p> <p>19 improves animal welfare?</p> <p>20 MR. GERMAINE: Objection to form.</p> <p>21 <b>A. That's what we're told.</b></p> <p>22 Q. And that's what Publix believes, right?</p> <p>23 <b>A. That's what we're told.</b></p> <p>24 Q. Publix has not stopped believing that, right?</p> <p>25 <b>A. We've been told that by our suppliers and by</b></p>

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27 (Pages 102 to 105)

<p style="text-align: right;">102</p> <p>1 <b>the FMI industry.</b></p> <p>2 Q. And do you have any reason to doubt what the</p> <p>3 FMI industry has told you, FMI organization has told</p> <p>4 you?</p> <p>5 <b>A. Do I have any reason to doubt what the -- no,</b></p> <p>6 <b>ma'am.</b></p> <p>7 Q. You're aware that you're testifying today in</p> <p>8 connection with litigation about egg suppliers to</p> <p>9 Publix, right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And do you know that the certified program is</p> <p>12 at issue in this litigation?</p> <p>13 <b>A. Yes.</b></p> <p>14 <b>(Wilson Exhibit 28 was marked for</b></p> <p>15 <b>identification.)</b></p> <p>16 Q. I hand you what's been marked Exhibit 28 and</p> <p>17 I represent that this is a filing that your lawyers</p> <p>18 and other lawyers have filed, in part, on Publix's</p> <p>19 behalf in this litigation. Do you understand?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. Now, this is a very long document and you</p> <p>22 don't want to read the whole thing probably.</p> <p>23 MR. GERMAINE: Are you directing him not to</p> <p>24 read the whole thing?</p> <p>25 MS. ADENDORFF: No.</p>	<p style="text-align: right;">104</p> <p>1 that are plainly anticompetitive."</p> <p>2 And then it has a case citation. It says:</p> <p>3 "That is those certain agreements or practices which</p> <p>4 because of their pernicious effect on competition and</p> <p>5 lack of any redeeming virtue are conclusively</p> <p>6 presumed to be unreasonable."</p> <p>7 Does Publix believe that the FMI animal</p> <p>8 welfare standards that its adopted has no redeeming</p> <p>9 virtue?</p> <p>10 MR. GERMAINE: I'm going to object to that</p> <p>11 question to the extent it calls for a legal</p> <p>12 conclusion. Moreover, I object to the question</p> <p>13 to the extent it calls for privileged</p> <p>14 information. If the witness can answer that</p> <p>15 question without revealing the substance of</p> <p>16 privileged information, you may answer the</p> <p>17 question; otherwise, I direct you not to answer.</p> <p>18 <b>A. I don't think I can answer that question.</b></p> <p>19 Q. As a Publix egg buyer buying UEP certified</p> <p>20 eggs, did you believe that eggs produced in</p> <p>21 compliance with that program had no redeeming virtue?</p> <p>22 MR. GERMAINE: Objection to form.</p> <p>23 <b>A. I'm not going to answer that.</b></p> <p>24 Q. Are you answering -- are you not answering on</p> <p>25 the basis of attorney-client privilege?</p>
<p style="text-align: right;">103</p> <p>1 Q. You may read the whole thing if you want but</p> <p>2 it might take you a very long time, if you so chose.</p> <p>3 I will direct you to page 54, where I'm going</p> <p>4 to ask my questions.</p> <p>5 MR. GERMAINE: And again, this is clearly</p> <p>6 outside the scope of what we're doing here,</p> <p>7 Olivia.</p> <p>8 MS. ADENDORFF: It relates to Publix's</p> <p>9 continued support of the FMI program.</p> <p>10 MR. GERMAINE: That's not a topic for today's</p> <p>11 depositions at all.</p> <p>12 MS. ADENDORFF: Their involvement with the</p> <p>13 FMI program is the topic of the deposition.</p> <p>14 MR. GERMAINE: Publix's involvement with the</p> <p>15 program has nothing to do with a Capper-Volstead</p> <p>16 filing filed in this litigation. You can ask</p> <p>17 your questions.</p> <p>18 Q. If you look on page 54 --</p> <p>19 MR. GERMAINE: I also object that this is</p> <p>20 clearly within the scope of the 30(b)(6) notice,</p> <p>21 which you chose not to participate in.</p> <p>22 Q. In the first sentence of the paragraph there</p> <p>23 it says: The per se -- hold on a second.</p> <p>24 Sorry. Okay. "The per se rule applies to</p> <p>25 agreements, like the agreement to limit output here,</p>	<p style="text-align: right;">105</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Do you know if at any time you have discussed</p> <p>3 whether there is any virtue to the UEP Certified</p> <p>4 Program with your egg suppliers?</p> <p>5 <b>A. Repeat that, please.</b></p> <p>6 Q. Since this litigation began, have you ever</p> <p>7 discussed with your egg suppliers whether there is</p> <p>8 any redeeming virtue to the UEP Certified Program?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Have you ever been in a business meeting</p> <p>11 with others at Publix who have discussed whether</p> <p>12 there is any redeeming virtue to the UEP Certified</p> <p>13 Program?</p> <p>14 <b>A. No.</b></p> <p>15 Q. And we also saw earlier that Publix cited the</p> <p>16 UEP Certified Program in response to a shareholder</p> <p>17 proposal challenging its animal welfare practices,</p> <p>18 right?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. So Publix publicly relied on the UEP</p> <p>21 Certified Program in defending its animal welfare</p> <p>22 policies and practices, right?</p> <p>23 MR. GERMAINE: Objection to form; misstates</p> <p>24 prior testimony on the document.</p> <p>25 <b>A. We talked about that earlier. I mean, we --</b></p>



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28 (Pages 106 to 109)

<p style="text-align: right;">106</p> <p>1 <b>that was in the -- or in the response.</b></p> <p>2 MS. ADENDORFF: That's all the questions I</p> <p>3 have.</p> <p>4 Molly, do you have any on the phone?</p> <p>5 MS. CRABTREE: I do not. Thank you.</p> <p>6 MS. ADENDORFF: And Peter?</p> <p>7 MR. SCHWINGLER: No questions.</p> <p>8 MS. ADENDORFF: Do y'all have any questions?</p> <p>9 MR. GERMAINE: We might have a couple.</p> <p>10 CROSS-EXAMINATION</p> <p>11 BY MR. GERMAIN:</p> <p>12 Q. Mr. Wilson, was anybody from Publix involved</p> <p>13 in the development of FMI's animal welfare</p> <p>14 guidelines?</p> <p>15 <b>A. No.</b></p> <p>16 Q. How do you know that?</p> <p>17 <b>A. From the years of -- the years of being a</b></p> <p>18 <b>merchandise and being in the office. We were never</b></p> <p>19 <b>involved with FMI's development of the program.</b></p> <p>20 Q. And so you testified earlier that Publix</p> <p>21 adopted the FMI Animal Welfare Guidelines at the</p> <p>22 advice of FMI as well as your suppliers. Are there</p> <p>23 particular suppliers you were referring to in that</p> <p>24 testimony?</p> <p>25 <b>A. Tampa Farms, Mike Bynum.</b></p>	<p style="text-align: right;">108</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MS. ADENDORFF:</p> <p>3 Q. Were you in the egg buying department in</p> <p>4 2002?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Were you in the egg buying department in</p> <p>7 2001?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Were you in the egg buying department in</p> <p>10 2003?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Do you understand that Publix adopted the FMI</p> <p>13 guidelines in 2002?</p> <p>14 <b>A. Same time after my implementing them, yes,</b></p> <p>15 <b>ma'am.</b></p> <p>16 Q. When did you join the Publix egg department?</p> <p>17 <b>A. I became a buyer in 2007. I was a</b></p> <p>18 <b>merchandise in 2002.</b></p> <p>19 Q. Did Tampa Farms exist in 2007?</p> <p>20 <b>A. Yes, ma'am.</b></p> <p>21 Q. And did you ever discuss with Tampa Farms the</p> <p>22 adoption of the UEP Certified Program?</p> <p>23 <b>A. No, ma'am.</b></p> <p>24 MS. ADENDORFF: That's all the questions I</p> <p>25 have.</p>
<p style="text-align: right;">107</p> <p>1 Q. And is there anything about information</p> <p>2 received by you or others at Publix from Mr. Bynum or</p> <p>3 Tampa Farms related to why Publix should adopt the</p> <p>4 FMI Animal Welfare Guidelines?</p> <p>5 <b>A. Was there information received by -- state</b></p> <p>6 <b>that again, please.</b></p> <p>7 Q. Sure. Was there information that you</p> <p>8 received from -- you or others at Publix received</p> <p>9 from Mr. Bynum or Tampa Farms about why it should</p> <p>10 adopt the FMI Animal Welfare Guidelines with regard</p> <p>11 to egg-laying hens?</p> <p>12 <b>A. He told us that's what we needed to do. He</b></p> <p>13 <b>told us it would be the -- it was the right thing to</b></p> <p>14 <b>do. He was a trusted supplier.</b></p> <p>15 Q. Did Mr. Bynum tell Publix that he had already</p> <p>16 implemented the UEP guidelines prior to the FMI</p> <p>17 endorsing the UEP program?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Was Tampa Farms Publix's largest egg supplier</p> <p>20 at the time the UEP guidelines were adopted by FMI?</p> <p>21 <b>A. Yes.</b></p> <p>22 MR. GERMAINE: I don't have any further</p> <p>23 questions.</p> <p>24 MS. ADENDORFF: I'm going to redirect on some</p> <p>25 of those questions.</p>	<p style="text-align: right;">109</p> <p>1 THE VIDEOGRAPHER: Okay. This concludes the</p> <p>2 deposition. We're now off the record. The time</p> <p>3 is 3:17 p.m.</p> <p>4 THEREUPON, the Deposition of JAMES WILSON,</p> <p>5 taken at the instance of the Defendants, was</p> <p>6 concluded at 3:17 p.m.</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>



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29 (Pages 110 to 112)

<p style="text-align: right;">110</p> <p style="text-align: center;">ACKNOWLEDGMENT OF DEPONENT</p> <p>I, _____, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any corrections appear on the attached Errata Sheet signed by me.</p> <p>_____ (DATE)                      (SIGNATURE)</p>	<p style="text-align: right;">112</p> <p style="text-align: center;">CERTIFICATE OF REPORTER</p> <p>STATE OF FLORIDA COUNTY OF POLK</p> <p>I, Susan D. Wasilewski, Registered Professional Reporter, Certified Realtime Reporter, Certified CART Provider, Certified Manager of Reporting Services, and Florida Professional Reporter, do hereby certify that I was authorized to and did stenographically report the examination of the witness named herein; that a review of the transcript was requested; and that the foregoing transcript is a true record of my stenographic notes.</p> <p>I FURTHER CERTIFY that I am not a relative, employee, or attorney, or counsel for any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the outcome of this action.</p> <p>DATED THIS 4/29/2014 at Lakeland, Polk County, Florida.</p> <p>_____ SUSAN D. WASILEWSKI, RPR, CRR, CCP, CMRS, FPR</p>
<p style="text-align: right;">111</p> <p style="text-align: center;">CERTIFICATE OF REPORTER OATH</p> <p>STATE OF FLORIDA COUNTY OF POLK</p> <p>I, Susan D. Wasilewski, Registered Professional Reporter, Certified Realtime Reporter, Certified CART Provider, Certified Manager of Reporting Services, Florida Professional Reporter, and Notary Public in and for the State of Florida at large, hereby certify that the witness named herein appeared before me on 4/17/2014, and was duly sworn.</p> <p>WITNESS my hand and official seal this 4/29/2014.</p> <p>_____ SUSAN D. WASILEWSKI, RPR, CRR, CCP, CMRS, FPR NOTARY PUBLIC - STATE OF FLORIDA MY COMMISSION NO. EE123944 EXPIRES: 10-23-15</p>	

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